TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 261.

W. J. HAWKINS AND WALTER CLARK, ASSIGNEES IN BANKRUPTCY OF THE ESTATE AND EFFECTS OF THOMAS P. DEVEREUX, DECEASED, A BANKRUPT; AND WALTER CLARK AND JOHN DEVEREUX, AS TRUSTEES OF THE ESTATE OF THE SAID THOMAS P. DEVEREUX, APPELLANTS,

vs.

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE AND JOHN TOWNSEND AND GEORGIANA P. TOWNSEND, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

FILED SEPTEMBER 4, 1880.

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1 *Caption.*

In the circuit court of the United States for the eastern district of North Carolina, held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable Hugh L. Bond, circuit court judge for the 4th circuit, presiding, and the honorable George W. Brooks, district court judge of said district, associate judges of said circuit court, sitting in equity, on Monday, the twenty-fourth day of November, in the November term of said court, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and fourth year, convened on the last Monday in November, being the twenty-fourth day of said month.

N. J. RIDDICK, *Clerk.*

Title of cause.

GRINFILL BLAKE AND WIFE, ELIZABETH J. Devereux Blake, John Townsend and wife, Georgiana P. Townsend, complainants,
against
WILLIAM J. HAWKINS AND WALTER CLARK, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, dec'd, a bankrupt; Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, R. C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, dec'd, defendants.

Filing of pros. bond and original bill.

Be it remembered that on the 26th day of March, in the year of our Lord one thousand eight hundred and fifty-nine, Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, both of the city, county, and State of New York, and citizens of said State of New York; and Georgiana P. Devereux, of Stratford, in the county of Fairfield, and State of Connecticut, and a citizen of said State of Connecticut, complainants, by their attorneys, Daniel G. Fowle and W. Graham Haywood, filed, in the office of the clerk of the circuit court of the United States for the district of North Carolina, at Raleigh, in said district, their prosecution bond, and also their original bill in equity against Thomas P. Devereux, of the county of Halifax, and State of North Carolina, and a citizen of said State of North Carolina, and the Right Reverend Leonidas Polk, bishop of Louisiana, and Frances Ann Polk, his wife, both of New Orleans, in the county of Orleans, and State of Louisiana, and citizens of said State of Louisiana, defendants, with numerous exhibits thereunto attached; which said bond, original bill, and exhibits are in the words and figures following, to wit:

Prosecution bond.

STATE OF NORTH CAROLINA:

Circuit court of the United States.

Know all men by these presents that we, Daniel G. Fowle and W. Graham Haywood, attorneys for Frank G. Q. Umsted and Elizabeth J. D. Umstead, his wife, & Georgiana P. Devereux as principals, and James S. Woodard as surety, are held and firmly bound unto Thomas P. Devereux, Leonidas Polk, and Frances Ann Polk, his wife, in the just and full sum of three hundred dollars, to the payment of which well and truly to be made, we do hereby bind ourselves, our heirs, executors, and administrators.

2

In testimony whereof we have hereunto set our hands and affixed our seals this 26th March, A. D. 1859.

The condition of the above obligation is such, that whereas the above-named Umsted and wife and G. P. Devereux have this day instituted a suit, in equity, in the circuit court of the United States for the district of North Carolina, against the above-named obligees: Now if the said complainants shall prosecute their said suit, and pay all such costs and damages, as shall be awarded against them, then this obligation to be void; otherwise to be of full force.

DANIEL G. FOWLE. [SEAL.]
W. GRAHAM HAYWOOD. [SEAL.]
JAMES S. WOODARD. [SEAL.]

Original bill in equity.—Filed M'ch 26th, 1859.

United States circuit court, district of North Carolina. In equity.

FRANK G. Q. UMSTED, ELIZABETH J. DEVEREUX UMSTED, and Georgiana P. Devereux
against
THOMAS P. DEVEREUX AND OTHERS.

To the honorable the judges of the circuit court of the United States for the district of North Carolina:

Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, both of the city, county, and State of New York, and citizens of said State of New York; and Georgiana P. Devereux, of Stratford, in the county of Fairfield, and State of Connetticut, and a citizen of said State of Connetticut, bring this their bill against Thomas P. Devereux, of the county of Halifax and State of North Carolina, and a citizen of said State of North Carolina, and the Right Reverend Leonidas Polk, bishop of Louisiana, and Frances Ann Polk, his wife, both of New Orleans, in the county of Orleans and State of Louisiana, and citizens of said State of Louisiana.

And thereupon your orator and oratrixes complain and say that your oratrixes are the only children of George P. Devereux, late of Bertie County, in the State of North Carolina, deceased; that your oratrixes'

said father departed this life on the 13th day of May, A. D. 1837; that your oratrix Elizabeth J. Devereux Umsted was then in the fourth year of her age, having been born on the 12th day of August, A. D. 1833; that your oratrix Georgiana P. Devereux was born on the 10th day of August next following her said father's decease; that your oratrixes' said father, by his last will and testament, which was duly proved and allowed, appointed your oratrixes' mother to be their guardian during the period of their infancy. That your oratrixes' mother, soon after the death of her husband, removed from the State of North Carolina to the State of Connecticut, where she has ever since resided; that your oratrixes resided with their said mother, and were
3 under her sole guardianship and protection, during the entire period of their infancy, and your oratrix Georgiana P. Devereux still so resides; that your oratrix Elizabeth J. Devereux Umsted intermarried with your orator Frank G. Q. Umsted on the 20th day of June, A. D. 1855, and thereupon removed to the State of Missouri, where she resided with her said husband until about the month of November, A. D. 1857, when they removed to the city of New York, where they have since resided.

That the defendants Thomas P. Devereux and Frances Ann Polk and your oratrixes' father were brothers and sister, being the only children of John Devereux and Frances, his wife, both late of the city of Raleigh, in the county of Wake, in the State of North Carolina, deceased; that the said Frances Devereux, your oratrixes' grandmother, survived the said John Devereux, her husband; that said Frances departed this life on the 3rd day of June, A. D. 1849, leaving her said son & daughter and your oratrixes as representing their deceased father, her sole heirs at law and next of kin.

That said John and Frances Devereux, during their life-time, and on the 3rd day of July, A. D. 1839, by deed of that date, conveyed to the said Thomas P. Devereux and his heirs a large amount of real estate, being all the real estate which had descended to the said Frances from her brother, George Pollok, then late of the county of Halifax and State of North Carolina, deceased; that said conveyance was declared to be upon and subject to the following (among other) charges and trusts:

"First. That the said Thomas P. Devereux and his heirs and assigns shall, on the 1st day of March, in each and every year, during the life of the said Frances Devereux, pay to the said Frances, into her own hands or according to her own order, and to her sole and separate use, and subject to her own disposal, as if she were a femme sole and unmarried, the yearly sum or three thousand dollars. * *

"Thirdly. That the said Thomas P. Devereux, his heirs or assigns, shall invest for or pay to the said Frances Devereux, at such time, in such portions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal, by will, deed, or writing in the nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture), as if she were a femme sole and unmarried, the sum of fifty thousand dollars."

And for greater certainty a copy of said deed is hereto annexed, marked "A"; and your orator and oratrixes pray that the same may be considered a part of this bill.

That a large part of said annual sum of three thousand dollars and of said gross sum of fifty thousand dollars, as your orator and oratrixes are informed and believe, remained unpaid by the said Thomas P. to the said Frances, or according to her appointment, order, or direction, at the time of the decease of the said Frances; and that said Frances, at the time of her decease, was seized and possessed of a considerable amount of other property, real and personal, including a considerable number of negro slaves.

And your orator and oratrixes, further complaining, say that, after the death of said Frances Devereux, two paper writings were found, each of them being signed by the said Frances Devereux, and each of them purporting to be her last will and testament, one of said paper writings bearing date the 23rd day of December, A. D. 1847, and the other on the 20th day of August, A. D. 1848. That each of said paper writings commenced as follows:

"In the name of God, amen. I, Frances Devereux, of the State of
4 North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and enacted by any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself."

That the dispositions contained in both said paper writings consisted chiefly of pecuniary legacies to several charitable institutions, and some small legacies and annuities to female friends of said deceased; that said paper writing bearing earliest date contained a legacy of four thousand dollars to each of five several charitable institutions; that in said paper writing bearing latest date each of the said five legacies was cut down to two thousand dollars; that in other respects said two paper writings were substantially alike; that your orator and oratrixes are informed and believe that said Frances, between the dates of said paper writings, disposed of large sums of money for charitable purposes, and that this was the cause of said five legacies being cut down in said paper writing bearing latest date.

That Frederick Nash, senior, the said Thomas P. Devereux, John Primrose, and William D. Cooke were named as executors in both said paper writings, and the said Primrose and Nash are now deceased, having died since the appointment of S. W. Whiting as administrator cum testamento annexo. That neither of said paper writings contained any residuary devise or bequest, and that the property left by said Frances was much more than sufficient to pay all her debts, funeral and testamentary expenses, and the legacies and annuities contained in either of said paper writings.

Copies of both said paper writings are, for greater certainty, hereto annexed, marked B and C, respectively, and your orator and oratrixes pray that the same may be considered a part of this bill.

That your orator and oratrixes have not sufficient knowledge or information to form a belief whether either of said paper writings was the last will and testament of said Faances, nor whether said Frances was, at the date of either of said paper writings, of a sound and disposing mind, memory, and

understanding, nor whether either of said paper writings was properly executed as a last will and testament, according to the laws of North Carolina; but they are informed and believe that if the said Frances was of a sound and disposing mind, memory, and understanding at the earliest of the dates above named, she was so also at the latest of the dates above named; that the defect in the execution of said paper writings, if any, was the incompetency of one of the attesting witnesses thereto, on account of interest, and that this objection was equally applicable to both said paper writings; and they are also informed and believe that if either of said paper writings was the last will and testament of said Frances, it was said paper writing bearing latest date.

And your orator and oratrixes, further complaining, say that soon after the death of said Frances Devereux the said Thomas P. Devereux, being then on a visit to your oratrixes' mother, in the State of Connecticut, informed her that he intended to contest the probate of both said paper writings, and expressed great confidence that said contest would be successful, thereby inducing her to believe that there was no conflict of interest between the said Thomas P. Devereux and your oratrixes; and that their interests would be protected, though they should take no active part in contesting the probate of said paper writings.

That soon after the said T. P. Devereux's return to the State of North Carolina he wrote to your oratrixes' mother, saying that the probate of said paper writings was about to be contested by him, and requesting her to join with him on behalf of your oratrixes; that she, in reply to said communication, expressed reluctance to joining in said contest from feelings of delicacy, but declared her willingness to join if the said Leonidas Polk and Frances Ann, his wife, also joined; but she, as your orator and oratrixes are informed and believe, gave the said T. P. Devereux no authority whatever to act on behalf of your oratrixes.

That the said T. P. Devereux, without any further communication with your oratrixes' mother, and without any authority in that behalf, pretended to employ William H. Haywood, jr., then a counsellor at law practicing in the State of North Carolina, to appear for your oratrixes and contest the probate of said paper writing.

That at a court of pleas and quarter sessions, began and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday (the 26th day) of August, A. D, 1849, said paper writings were propounded by said William D. Cooke, one of the executors therein named, for probate as the last will and testament of said Frances Devereux, deceased; that said paper writings were thereupon filed in said court, and an order made that subpœnas issue to the subscribing witnesses, and that notice issue to the next of kin of said deceased, citing them to be and appear at the then next court to hear the proceedings of said court in respect to the probate of said paper writings as the last will and testament of said deceased.

That on the same day the said William H. Haywood, jr., procured himself, by an order of said court, to be appointed guardian ad litem for your oratrixes, and to defend their rights and interests in said proceedings, and caused it to be stated on the records of said court that said order was made at the instance of their mother, who resided with them in Connecticut, which statement, as your orator and oratrixes are informed and believe,

was made at the suggestion and upon the authority of the said Thomas P. Devereux, and was entirely false.

That the said Thomas P. Devereux, in entire contradiction to what he had so as aforesaid stated and represented to your oratrixes' mother and induced her to believe, gave out and represented in the State of North Carolina, and to the persons and institutions interested under said paper writings as legatees, that he took no part in said proceedings, but was entirely neutral, and that the probate of said paper writings was to be contested by your oratrixes alone; and accordingly he admitted notice of said proceedings, but did not appear therein. That during the pendency of said proceedings the said Thomas P. Devereux entered into negotiations with said charitable institutions, the principal legatees in said paper writings, for the purchase of their respective legacies; that the said William H. Haywood, jr., while professing to act for your oratrixes in said proceedings, acted as the attorney and counsel of said Thomas P. Devereux in said negotiations, and as such conducted the correspondence between the said legatees and the said Thomas P. Devereux; that the said Haywood, acting as such attorney and counsel, made a proposition to said legatees to the effect that said Thomas P. Devereux would pay to each of them the sum of two thousand dollars, in consideration that they would
6 assign and transfer to him for his own use and benefit all their claims, rights, and interests under said paper writings.

That while said negotiations were pending, and before said proposition was accepted, such proceedings were had in said court of pleas and quarter sessions that on the third Monday in August, A. D. 1850, upon an issue awarded to try whether said paper writings or either of them was the last will and testament of said Francis Devereux, deceased, it was found by a jury duly summoned, sworn, and empanelled to try said issue that neither of said paper writings was the last will and testament of said Frances; and thereupon judgment was rendered accordingly, from which judgment the said Cooke prayed an appeal to the next superior court of law for Wake County, which was granted and the appeal bond waived.

And your orator and oratrixes, further complaining, says that soon after said verdict and judgment in said court of pleas and quarter sessions the said charitable institutions accepted said proposition of Thomas P. Devereux, and thereupon respectively executed and delivered to him a deed or instrument in writing purporting to assign, convey, set over, and release to him all rights and interests which they had under either of said paper writings, and empowering him to recover and collect the same to his own use.

That afterwards and during the pendency of said appeal, and just before the same was tried, the said William D. Cooke, the appel'ant, upon motion made in said superior court, obtained leave to withdraw from said suit altogether, and accordingly his name was stricken therefrom; and thereupon the said Thomas P. Devereux, one of the executors named in said paper writings, became a party to said suit, as executor and app'lant, in the place and stead of said Cooke.

That afterwards such proceedings were had in said superior court on said appeal that at a special term of said court begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of July, A. D. 1852, upon an issue whether either

of said paper writings was the last will and testament of said Frances Devereux, deceased, a verdict was obtained by the said Thomas P. Devereux that said paper writing bearing earliest date was her last will and testament; whereupon it was ordered that a procedendo issue to said court of pleas and quarter sessions to admit to probate said last-mentioned paper writing, and to have duly qualified Thomas P. Devereux, the executor therein named.

That said Thomas P. Devereux never informed your oratrixes' mother that he had employed said Haywood to act for them, and neither said Devereux nor said Haywood ever informed her as to said proceeding in the court of pleas and quarter sessions, or on said appeal, nor consulted her in reference thereto, and she remained in total ignorance thereof, except as she occasionally & accidentally received information from other sources.

That your oratrixes' mother being on a visit to North Carolina during the pendency of said appeal, and after the purchase of said legacies by said Devereux, sought an interview with said Haywood, which the said Haywood declined, alleging that he did not recognise her in the transaction, that he acted for her children, although the said Haywood well knew that she had no personal interest in the estate of said Frances Devereux, and much less any interest in conflict with the interest of her children. That on the same visit the said Devereux informed your oratrixes' mother, in answer to her inquiries, that it would be wholly immaterial to your oratrixes whether said paper writings were admitted to
7 probate or not, as he intended in any event to carry out his mother's charitable designs; whereas in truth he had already purchased up the bulk of said charitable legacies, and he alone was mainly interested in sustaining said paper writings or either of them.

That, as your orator and oratrixes are informed and believe, said appeal and the proceedings thereon were entirely under the control of said Thomas P. Devereux; that said Haywood, so far as he acted at all in said proceedings, acted entirely under the direction and according to the wishes of said Devereux; and that your oratrixes were in fact wholly unrepresented in said proceedings; and that said proceedings were entirely irregular and fraudulent.

That the sole purpose of said Thomas P. Devereux, in conducting said proceedings and in purchasing said legacies, was to deprive your oratrixes of their just rights as next of kin of said Frances; that said charitable institutions received all that they were legally and justly entitled to, as the said Devereux well knew; and it was only by depriving your oratrixes of their just rights as aforesaid that said Devereux could derive any benefit from said purchase. And your orator and oratrixes are advised that said legacies will be deemed to have been paid off and extinguished for the benefit of the estate of said Frances, and that said Devereux will not be entitled to any benefit from the purchase of said legacies, except in common with your oratrixes.

And your orator and oratrixes further say that said Thomas P. Devereux, at the time of the transactions hereinbefore stated, stood in a relation of great confidence to your oratrixes and their mother; that he was their nearest male relative in North Carolina to whom they could look for advice and protection; that your oratrixes' mother knew him to be a lawyer of

superior knowledge and skill, and placed implicit reliance upon whatever he told her; all of which the said Devereux well knew.

And your orator and oratrixes, further complaining, say that at a court of pleas and quarter sessions, begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of November, A. D. 1852, the said paper writing bearing earliest date having been previously admitted to probate and recorded in said court, in pursuance of the procedendo hereinbefore referred to, the said Thomas P. Devereux appeared in open court, by his attorney in fact, George W. Mordecai, and pretended to renounce his office of executor of the last will and testament of said Frances Devereux, deceased, whereupon one S. W. Whiting was appointed administrator of said Frances with the will annexed.

But your orator and oratrixes are informed and believe that said Thomas P. Devereux intermeddled with the assets of said deceased both before and after his pretended renunciation, and had the entire and exclusive control and administration thereof; that he took possession of said assets immediately upon the decease of said Frances, retained them in his possession, disposed of them from time to time, and converted them to his own use, according to his will and pleasure; and especially that on or near the seventh of October, A. D. 1852, the said Thomas P. Devereux, before the appointment of Whiting as administrator with the will annexed, caused certain slaves belonging to the estate of the said Frances Devereux, deceased, amounting to the number of fifty-seven, to be appraised and divided between the said Devereux and other persons; that said appraisal and division were made after the death of William H. Haywood, jr., your oratrixes' pretended guardian ad litem; and that the said Devereux has now in his possession, or in the possession of his attorney or agents,
8 the original paper or a copy thereof, containing the details of said appraisals and division; that said Whiting was appointed by the procurement of said Thomas P. Devereux, and as a mere form, the said Devereux becoming his bondsman; that he either never acted at all in the administration of said assets, or acted entirely under the direction of said Devereux; that said Whiting never returned any inventory, nor rendered any account of his administration, and is now deceased. That said Devereux's renunciation of his executorship, as your orator and oratrixes are informed and believe, was a contrivance on his part in order to avoid being called to account by your oratrixes; and that he procured said renunciation to be accepted by a concealment and suppression of the facts herein stated. And your orator and oratrixes are advised that said renunciation, as to them, is wholly void and of no effect.

And your orator and oratrixes, further complaining, says that John Devereux, hereinbefore referred to, the husband of said Frances Devereux, on the 1st day of July, 1844, departed this life, leaving the said Frances, his wife, him surviving, and leaving a large real and personal estate; that after his death a paper writing was found purporting to be his last will and testament, bearing date the 20th day of October, A. D. 1843, wherein the said Thomas P. Devereux and John Devereux, the son of said Thomas P. Devereux, were nominated and appointed his executors and residuary legatees; that said paper writing was afterwards duly proved and allowed

as the last will and testament of said deceased, and said Thomas P. Devereux and his said son John took upon themselves the execution thereof; and the said Thomas possessed himself of the personal estate of said deceased, or the greater part thereof.

That said John Devereux made but a trifling provision in his will for the said Frances, his wife, although the bulk of his property had been acquired through her; that said Frances, feeling herself aggrieved by said will, dissented therefrom, and claimed her child's part of her husband's personal estate; that said executors, as your orator and oratrixes are informed and believe, set off and allotted to said Frances, as her child's part, a one-fourth part of the personal estate of which her said husband died possessed; whereas your orator and oratrix are advised that in consequence of large advancements made by the said John during his life to each of his children, the child's part of said Frances exceeded the entire value of the personal estate of which her said husband died possessed, and that she was accordingly entitled to the whole of said personal estate; all of which the said Thomas well knew.

And your orator and oratrixes, further complaining, say that they are informed and believe that said Frances Devereux, during her life, made large settlements upon her son, Thomas P. Devereux, and her daughter, Frances Ann Polk; and your orator and oratrixes are advised that said settlements or advancements are to be accounted for in ascertaining the share or portion of the estate of said Frances to which your oratrixes are entitled. And your orator and oratrixes are informed and believe that upon such accounting it would appear that your oratrixes, as representing their late father, are entitled to all the property which the said Frances left undisposed of, including said personal estate of her late husband, to which she was entitled.

And your orator and oratrixes, further complaining, say that your oratrixes, being entitled as aforesaid, have frequently, and in a friendly manner, by themselves and others, applied to the said Thomas P. Dev-
9 ereux, and requested him to come to an account with them for the real and personal estate and effects of their said grandmother, deceased, including the personal estate of her said husband, to which she was entitled as aforesaid, and to pay to them the clear residue thereof; and they well hoped that said Devereux would have complied with such their request, as in justice and equity he ought to have done.

But now so it is, may it please your honors, that the said Thomas P. Devereux absolutely refuses to comply with such your oratrixes' request, sometimes concluding that said Frances left barely sufficient property to pay her debts and legacies; at other times pretending that the property of said Frances, other than said sum of fifty thousand dollars, over which she had a power of appointment, was first to be applied to the payment of her debts and legacies, leaving said sum to lapse for his benefit; at other times pretending that the whole, or nearly the whole, of said sum of fifty thousand dollars, and said annual sum of three thousand dollars, was paid to the said Frances, or according to her appointment, during her life; at other times pretending that he had a right to purchase, and did purchase, said charitable legacies for his own benefit, and that he has a right to receive out of the estate of the said Frances, on account of said legacies, twice the amount that he paid for the same; at other times pretending that said

John Devereux, the elder, made no advancements to his children during his life, or, if he did, that they were not to be accounted for in ascertaining the child's part of said Frances; at other times pretending that the said Frances Devereux made no advancements during her life to himself and to said Frances Ann Polk, or, if she did, that said advancements are not to be accounted for in ascertaining the distributive share of your oratrixes in the estate of said Frances; at other times pretending that he never accepted the office of executor, nor intermeddled with the assets of said Frances, or, if he did, that his renunciation was nevertheless good and valid, and that he is not liable to be called to account by your oratrixes; whereas your orator and oratrixes expressly charge the contrary of each and every of said pretences to be true.

All of which actings, doings, and pretences of said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your oratrixes.

To the end, therefore, that the said defendants may, upon their several and respective oaths, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, a full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were here repeated, and they were particularly interrogated thereto; and more especially that the said Thomas P. Devereux may, in manner aforesaid, answer and set forth whether a large part of said annual sum of three thousand dollars, and said gross sum of fifty thousand dollars, did not remain unpaid by the said defendant, either to the said Frances, or her appointees, at the time of her death, and what part and how much in particular of said sums so remained unpaid; and whether the said Frances, at the time of her decease, was not seized and possessed of a considerable amount of other property, real and personal, and how much in particular of each; and whether her personal property did not include a considerable number of negro slaves, and how many in particular, and of what else in particular it consisted; and whether her property was not much more than sufficient to pay all her debts and legacies, and how much more; and whether he did not make to your oratrixes' mother the several statements and representations hereinbefore set forth, or what other statements and representations in that behalf, and at the several times and upon the several occasions hereinbefore stated, or at what other times and on what other occasions; and whether he did not write to your oratrixes' mother at the time and to the effect hereinbefore stated, or at some other time and to a similar effect; and whether your oratrixes' mother did not answer his said letter to the effect hereinbefore stated, or to what other effect; and whether he did not profess to employ William H. Haywood, jr., to act for your oratrixes as hereinbefore stated, or how otherwise; and whether in so doing he acted under any and what authority; and whether he did not give out and represent in the State of North Carolina, and to the persons and institutions interested under said paper writings as legatees, that he took no part in contesting the probate of said paper writings, and that the probate of said paper writings was to be contested by your oratrixes alone; and whether he did not enter into negotiations to purchase said legacies at the time and in the manner hereinbefore stated, or how otherwise, and whether the said William H. Haywood, jr., did not act as his attorney and counsel in such ne-

gotiations, and as such conduct the correspondence between the said Devereux and the said legatees, or how otherwise; and whether said Haywood did not, as such attorney and counsel, make a proposition to said legatees, to the effect hereinbefore stated, or how otherwise; and whether said Devereux ever informed your oratrixes' mother that he had employed said Haywood to act for your oratrixes, or ever informed her as to said proceedings in said court of pleas and quarter sessions, or on said appeal, or ever consulted her in reference thereto, and, if so, when and how; and whether the said Devereux, both before and after his pretended renunciation of his executorship, did not intermeddle with the assets which were of said Frances, and control and administer the same in the manner and to the extent hereinbefore stated, or in some other and what manner, and to some other and what extent; and whether said Whiting ever acted in the administration of said assets, and, if so, to what extent; whether he ever filed an inventory or rendered an account; what assets, if any, ever came into his hands, and how he disposed of the same; and whether he was not one of the executors of said John Devereux, the elder, and as such did not possess himself of the personal estate of said John, or the greater or some part thereof, and what part and how much in particular; and whether the said John Devereux did not make large advancements to his children during his life, and to what amount in particular, and whether said advancements were accounted for in ascertaining the child's part of said Frances, and, if not, why not; and whether said Frances Devereux did not, during her life, make large advancements to said Thomas P. Devereux and to the said Frances Ann Polk, and to what amount in particular.

And that the said defendant may set forth a full, true, and just inventory and account of all and singular the goods, chattels, real and personal estate and effects whatsoever, which the said Frances Devereux was seized or possessed of, interested in, or entitled to at the time of her death, and all the particulars whereof the same consisted, including said sum of fifty thousand dollars, said annual sum of three thousand dollars, and the personal estate of said John Devereux, to which said Frances was entitled, and the quantities, qualities, full, real, and true values of all and every such particulars; and whether all or some, and which of such particulars have not, and when, been possessed or received by or come to the hands of him, the said defendant,

11 or of some and what person by his order or for his use; and how and in what manner, and when and where, and by and to whom, and for how much, the same and every or any and what parts or part thereof have or hath been sold or disposed of; and whether any and what parts thereof, and to what value and amount now remain undisposed of, and what has become thereof; and also a particular account of all and every the debts whatsoever which were justly due and owing from the said Frances Devereux at the time of her death, and to whom and for what and on what securities, if any, the same were respectively due; and whether any and what sums of money have been since paid in or towards the discharge of all or any and which of the said debts; and when and by whom, and to whom, and for what; and whether any and what sums or sum of money do or doth now remain unpaid on account thereof; and whether the said defendant hath not in his possession or power divers or some and what books, accounts, books of accounts, letters, copies of letters, and extracts of

letters, memoranda, and writings relating to the matters hereinbefore mentioned, or some or one and which of them; and that he may set forth a list or schedule thereof, and may produce the same according to the rules and practice of this court; and whether the said defendant hath now in his possession or power all such of the aforesaid particulars as at any time have or hath been in his possession or power, and, if not, then that he may set forth what has become thereof, and in whose possession or power the same were when he last saw or heard of them respectively.

And that an account may be taken of the real and personal estate and effects of the said Frances Devereux possessed by or come to the hands of the said defendant, or to the hands of any other person or persons, by his order, or to his use, or which, but for his wilful default or neglect, might have been possessed or received by him, including said sum of fifty thousand dollars, and said annual sum of three thousand dollars, and the personal estate of said John Devereux, to which the said Frances was entitled; and also an account of the said Frances' funeral expenses, debts, and legacies; and that the said Frances' real and personal estate may be applied to the payment thereof in a due course of administration. And that the residue and clear surplus thereof may be ascertained, and your oratrixes' just share and proportion thereof decreed to be paid to them.

And that your oratrixes may have such further or other relief in the premises as the nature and circumstances of their case may require and to your honors shall seem just.

May it please your honors to grant unto your orator and oratrixes a writ of subpœna, to be directed to the said Thomas P. Devereux, Leonidas Polk, and Frances Ann Polk, his wife, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear before your honors in said court, and then and there to answer the premises, and, further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, shall ever pray, &c.

FRANK G. Q. UMSTED.
ELIZABETH J. DEVEREUX UMSTED.
GEORGINA P. DEVEREUX.

Affidavit of F. G. Q. Umsted to O. B.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, ss:

On this twenty-third day of March, A. D. 1859, before me personally
12 appeared Frank G. Q. Umsted, of the city of New York, one of the plaintiffs in the foregoing bill in equity, and who has signed the same, and he being by me duly sworn, did depose and say that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and that as to those matters he verily believed it to be true.

[SEAL.] R. E. STILLWELL,
United States Commissioner, duly commissioned and sworn, and dwelling in the city and district aforesaid.

Affidavit of Eliz. J. D. Umsted to O. B.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, ss:

On this twenty-third day of March, A. D. 1859, before me personally appeared Elizabeth J. Devereux Umsted, of the city of New York, one of the plaintiffs in the foregoing bill in equity, and who has signed the same, and she being by me duly sworn did depose and say that she has read the said bill and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated on her information and belief, and that as to those matters she verily believed it to be true.

[SEAL.] R. E. STILLWELL,
United States Commissioner, duly commissioned and sworn, and dwelling in the city and district aforesaid.

Affidavit of G. P. Devereux to O. B.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, ss:

On this 23rd day of March, A. D. 1859, before me personally appeared Georgiana P. Devereux, of the town of Stratford, in the State of Connecticut, one of the plaintiffs in the foregoing bill in equity, and who has signed the same, and she being by me duly sworn did depose and say that she has read the said bill and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated on her information and belief, and that as to those matters she verily believed it to be true.

[SEAL.] R. E. STILLWELL,
United States Commissioner, duly commissioned and sworn, and dwelling in the city and district aforesaid.

C. C. cl'k's certificate as to official capacity of R. E. Stillwell, com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stillwell, whose name is subscribed to the annexed jurats, and that the signature to the same is in his proper handwriting.

And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

13 In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this 23rd day of March, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of these United States the eighty-third.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Exhibit A, with original bill.

Deed from John and Frances Devereux, his wife, to Thomas P. Devereux and his heirs, July 3rd, A. D. 1839.

This indenture, made the third day of July, in the year of our Lord one thousand eight hundred and thirty-nine, between John Devereux, esq., of the county of Wake, and Frances Devereux (formerly Pollok), his wife, of the one part, and Thomas P. Devereux, of the same county (son of the said John and Frances), of the other part, witnesseth:

That whereas George Pollok, esq., late brother of the said Frances, hath recently departed this life, intestate, unmarried, and without issue, leaving the said Frances and the children of the deceased half-sister, on the part of his mother, his heirs at law, and was seized in fee-simple, at the time of his death, of divers messuages, tracts, lots, and parcels of land, situate in the counties of Orange, Halifax, Northampton, Martin, Bertie, Craven, Jones, and elsewhere in the State of North Carolina, of which lands some had been transmitted by descent and derived by gift, devise, or settlement to the said George from his paternal ancestors, and have now, by his death, descended upon the said Frances as the sole heiress of the said George on the part of his father; and others of the said lands were purchased by the said George during his life, and now, by his death, have descended upon the said Frances, and the said children of said deceased sister, as tenants in common; the said Frances entitled to one undivided moiety, and the said children, as representing their mother, together entitled to the other undivided moiety thereof; and whereas the said John and Frances are minded to settle and assure all the said lands and real estate, which have so accrued to the said Frances, in the manner, and to and for the uses, trusts, and purposes hereinafter expressed and declared:

Now, therefore, in consideration of the premises, and of one dollar by the said Thomas to the said John and Frances in hand paid, and for divers other good causes and considerations, they, the said John Devereux and Frances, his wife, have given, granted, bargained, and sold, and do by these presents give, grant, bargain, and sell, unto the said Thomas P. Devereux, and his heirs, all the said messuages, tracts, lots, and parcels of lands situate in the counties above named, or elsewhere, which, on the death of the said George Pollok, descended upon the said Frances as his only heiress on the part of his father, and also all the moiety, share, and portion of the said Frances and to all the said messuages, tracts, lots, and parcels of land situate in the said counties, or elsewhere, which have descended upon the said Frances and the said children of the said deceased sister of the said George, as tenants in common, together with all the right, title, interest, property, and estate of them, the said John and Frances, and each of them, of, in, and to the same, and all other the land and real estate, wheresoever situate, which were of the said George Pollok at his death, to have and to hold the same,

14 with the appurtenances, unto him, the said Thomas P. Devereux, his heirs and assigns forever, upon and subject, nevertheless, to the following charges, uses, trusts, restrictions, directions, provisions, and and limitations, that is to say:

First. That the said Thomas P. Devereux, his heirs and assigns, shall, on the first day of March in each and every year during the life of the said Frances Devereux, pay to the said Frances, into her own hands, or according to her own order, and to her sole and separate use, and subject to her own disposal, as if she were a feme sole and unmarried, the yearly sum of three thousand dollars.

Secondly. That the said Thomas, his heirs or assigns, shall pay to the said John Devereux the sum of ten thousand dollars, one moiety of which to be paid on the first day of March, A. D. 1841, and the other moiety one year thereafter; but it is understood that should the said John receive from the said Thomas, as administrator of the said George Pollok, any of the effects which were of the said intestate, then the price thereof shall be deemed and taken in payment, or part payment, of the said sum of ten thousand dollars.

Thirdly. That the said Thomas P. Devereux, his heirs or assigns, shall invest for, or pay to, the said Frances, at such times, in such proportions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal by will, deed, or writings in nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture) as if she were a feme sole and unmarried, the sum of fifty thousand dollars; but if the said sum of money, or any part thereof, shall remain unpaid, or shall not be invested during her life, and if the said Frances shall not by deed, or will, or writing in nature thereof, or by some other act give, grant, dispose, or direct any payment, investment, or application of the same, then the said sum of money, or so much thereof as shall remain not paid, given, granted, disposed, or directed to be invested, paid, or applied, shall be considered as lapsing, and the charge therefor as extinguished for the benefit of the said Thomas.

Fourthly. That the said Thomas P. Devereux, his heirs or assigns, shall pay to Elizabeth Devereux and Georgina Devereux, infant children of the late George P. Devereux (son of the said John and Frances), by his wife Sarah Elizabeth, each the sum of eleven thousand dollars, to be paid to them respectively on attaining full age, or marriage, with interest thereon after the first day of March, A. D. 1842, as follows, that is to say, for five years thereafter, at the rate of three per centum per annum, and then afterwards at the usual rate of six per centum per annum, payable on the first day of March in each and every year; and should one of the said children die unmarried and within age, then one moiety or half part of the said sum of money so directed to be raised for her shall be paid to the said Sarah Elizabeth, her mother, for her own use, if she shall be living at the death of such child, and the other moiety or half part shall lapse, and the charge thereof be extinguished for the benefit of the said Thomas; and in like manner, should the other of the said children die unmarried and within age, one moiety or half part of her portion shall be paid to the said Sarah Elizabeth (if then living) for her own use, and the residue thereof shall lapse, and the charge be extinguished for the benefit of the said Thomas; and should the event on which the said Sarah Elizabeth will become entitled to the moieties of the said sum, or either of them, happen after the first day of March, A. D. 1842, then the same shall be payable to her immediately (if before) then on that day. But should it happen

that at the death, unmarried and within age, of both or either of
15 the said children, their mother shall not be alive, so as to take moiety of the portion or portions of such child or children, the whole thereof shall lapse and the charge be extinguished for the benefit of the said Thomas.

And it is hereby declared that the said Thomas, his heirs or assigns, may, at his or their discretion, anticipate the time for paying the said two sums of money, and may, before the sums or either of them shall become due and payable, pay the whole, or any part thereof, to any person by law authorized to receive the same on behalf of the said children of either of them, and as the said John and Frances have entire confidence in the said Sarah Elizabeth, it is hereby expressly declared that she may receive and the said Thomas may make to her any payment on account of her said children or either of them, and her receipts for any such payments, whether of principal or interest, shall be a full acquittance of the said Thomas.

Fifthly. That whereas the said Sarah Elizabeth, as the personal representative of her late husband, is indebted to Collin Clarke in the sum of six thousand dollars, and said Thomas is immediately to assume upon himself the said debt, to release her therefrom, and to pay the same.

Sixthly. That the said Thomas P. Devereux, his heirs and assigns, shall pay to Frances Ann Polk, wife of the Right Reverend Leonidas Polk, and daughter of the said John and Frances, the sum of fifty thousand dollars ($50,000), to be paid in equal annual instalments of five thousand dollars, the first payment to be made on the first day of March (A. D. 1842), one thousand eight hundred and forty-two, and the said Thomas shall be charged with interest on the said sum of fifty thousand dollars, and such portions thereof as may from time to time remain unpaid, as follows; that is to say, for five years from and after the first day of March, A. D. 1842, at the rate of three per centum per annum, and thenceforward at the usual rate of six per centum per annum; provided always that the said Thomas P. Devereux may, at his discretion, pay and discharge the said sum of money, or any part thereof, or any instalment or part thereof, from time to time, and at any time before the same shall become payable; and provided also, and it is hereby declared and directed, that one moiety or half part of the said sum of fifty thousand dollars shall be paid into the proper hands of the said Frances Ann Polk, or otherwise be vested, held, or disposed of, to, and for the sole and separate use of the said Frances Ann, without being in any manner subject to any charge, release, assignment, or control of her present or any future husband, nor to pass to nor vest in the personal representative of such husband, but to be in all respects subject to her order or disposal, and to pass at her death (if then undisposed of) as if she were a feme-sole and unmarried. And provided further, and it is hereby directed, that should the said Leonidas and Frances Ann at any time on or before the first day of March, A. D. 1841, elect to take lands instead of the said sum of fifty thousand dollars, and also to take negroes instead of a like sum directed to be raised for the said Frances Ann by deed (bearing even date with these presents, from the said John Devereux and the said Thomas P. Devereux, as will appear by reference thereto), and notify the said Thomas of such election to take lands and slaves instead of the said two sums of money; or should the said Thomas, on or before the said first day of March, A. D. 1841, elect, and notify the said

Leonidas and Francis Ann of his election, to give lands and slaves instead of the said two sums of money, then on the first day of January, A. D.
16 1842, there shall be allotted for the said Frances Ann Polk, in fee-simple, a share or portion of the lands hereby conveyed and assured of the full value of fifty thousand dollars, and the legal title of the same shall be made to or for the said Frances Ann, and the charge for the said money shall thereby cease and determine, and of the land so allotted or conveyed for the said Frances Ann one moiety in value shall be properly assured to her sole and separate use and subject to her own disposal, as if she were a feme-sole and unmarried, free from all control or interest of her present or any future husband.

Seventhly. That should the personal estate of the said George Pollok prove insufficient to pay and satisfy all his just debts, and by reason thereof there should remain any debt or debts of the said George Pollok properly chargeable on his real estate, the said Thomas shall pay and satisfy the proportion thereof which ought justly to be borne by the lands descended to the said Frances Devereux, and hereby conveyed to the said Thomas.

And the said John and Frances Devereux do hereby declare all the foregoing sums of money, payments, and duties directed to be paid and discharged to be express charges and liens upon the real estate hereby assured, and subject thereto, and of the performance and satisfaction thereof, they, the said John and Frances Devereaux, do hereby declare that he, the said Thomas, his heirs and assigns, shall hold all the lands and real estate hereinbefore described and granted, upon and to the uses, trusts, and purposes following; that is to say:

Upon trust, for his own use and benefit during his natural life, and no longer; and from and after his death upon trust for the payment and satisfaction, and to stand charged with the payment and satisfaction, of all and every the just debts which the said Thomas may owe at the time of his death, and subject thereto upon trust for any one or more of the children (born or to be born) of the said Thomas, their wives or husbands, for such estates, upon such trusts, to such uses, and subject to such charges, conditions, and restrictions as he, the said Thomas, shall, by deed or will, direct, limit, and appoint; and should the said Thomas make an appointment to or in favor of more than one of his children, sons-in-law, or daughters-in-law, it is hereby declared that they shall take in such proportions in all respects as he shall declare, and that no disproportion of value shall be deemed or taken (however great such disproportion may be) to make the said appointment illusory, or in any manner to defeat the same, but that his power shall be absolute and without restriction to appoint the whole to one in exclusion of the residue, to some in exclusion of the residue, or to all; and if to more than one, or to all, then with such difference as he may please to make between them, though to some he should appoint a mere nominal sum or value; and in default, or for want of any such appointment, then upon trust for the children of the said Thomas, who shall survive him, and their heirs, share and share alike, in fee-simple.

And should any child of the said Thomas die during the life of the said Thomas, leaving issue which shall survive the said Thomas, such issue shall stand in the place of such child, and take the portion or share that

would by such child have been taken upon his or her surviving the said Thomas.

And it is further declared that the issue of any child of the said Thomas shall (after the death of such child) be deemed and taken, to
17 all intents and purposes, to be within the power of appointment above given to the said Thomas.

And whereas it will be necessary to make partition of the said lands and real estate held in common as above stated, and whereas it may be beneficial to both the parties to the said partition to make exchanges by assigning lands which descended upon the said Frances solely, to the said children of the said deceased sister of the said Pollok, and to receive instead thereof lands so held in common, and to make other arrangements (which cannot be foreseen and specified) in order to give, as far as possible, to the parties to the said partition, respectively, allotments of land compact and convenient, it is therefore hereby declared and provided that the said Thomas P. Devereux (with the assent of the said John and Frances during their lives, and absolutely, and at his sole will and discretion, after their deaths) shall have full power to make such partition, in such manner as he may deem most suitable, proper, and convenient, to exchange lands of which the said Frances is sole seized for lands held in common as aforesaid, and in all other respects to settle and arrange the said partition as he shall deem best; and what he shall so do, settle, and arrange shall be absolutely and to all purposes binding, as if he were the owner of the whole in fee-simple, without being subject to any trust, use, or charge whatever; but he shall hold any lands which he may acquire by such exchanges or other arrangements upon the trusts hereinbefore declared.

And it is further declared that the said Thomas, his heirs and assigns, shall have power, in order to raise any of the sums of money herein directed to be paid, to sell any parts or portions of the lands hereby granted.

And whereas circumstances which cannot be foreseen and expressly provided for may make it expedient that the said lands and real estate (after all the above charges have been paid, satisfied, and extinguished) should be charged with debts, or be exchanged, sold, and disposed of, and the proceeds otherwise invested upon the trusts aforesaid; therefore it is expressly declared that the said Thomas P. Devereux shall have ample and full power and authority, from time to time, and at all time', at his own will and pleasure, by any proper deeds or assurances, to charge with the payment of any just debt or debts of the said Thomas, or to grant, sell, and exchange all or any part of the said lands and real estate, and to invest the proceeds of such sale or sales in other funds, real or personal, he, the said Thomas, holding any lands which he may acquire by exchange, and any funds, real or personal, in which he may make any such investment, upon the trusts and with the power herein declared touching the lands which he may so grant, sell, or exchange, and any and every such grant, sale, exchange, and disposition shall pass the title discharged of any use or trust hereby declared for the any family of the said Thomas.

In witness whereof the said John Devereux and Frances, his wife, and

the said Thomas P. Devereux have hereunto set their hands and seals the day and year first above written.

JOHN DEVEREUX. [SEAL.]
FRANCES DEVEREUX. [SEAL.]
T. P. DEVEREUX. [SEAL.]

Signed, sealed, and delivered (erasures and interlineations first made) in presence of—

GEORGE E. BADGER.

18 *Probate of deed.*

STATE OF NORTH CAROLINA, *ss:*

Be it remembered that this day, at the city of Raleigh, before me, William Gaston, one of the judges of the supreme court, personally appeared John Devereux and Frances Devereux, his wife, the grantors in the foregoing deed of conveyance from them to Thomas P. Devereux, and acknowledged the due and legal execution thereof as their act and deed for the purposes therein declared.

And the said Frances Devereux, being thereupon privately examined by me, separate and apart from her said husband, touching her free consent in executing the said conveyance, she, on such examination, declared that she had executed the same freely, and of her own will and accord, without any force, fear, threats, or other undue influence of her said husband, or any other person, and did still voluntarily assent thereto.

And the said Thomas P. Devereux also, on the same day and at the same place, before me, acknowledged the execution by him of the said deed of conveyance.

Let it be registered, July 3rd, 1839.

WILLIAM GASTON.

Certificate of registration of deed.

This deed was registered March 9th, 1848.

SAMUEL CALVERT, *P. R.*,
Jackson, Northampton County, North Carolina.

Exhibit B with original bill.

Frances Devereux's will, dated 23rd day of December, A. D. 1847.

In the name of God, amen: I, Frances Devereux, in the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself.

And I would here declare that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour, Jesus Christ, and ac-

knowledge my best works are utterly unworthy of acceptance further than as proof of my faith, I cast them from me, and cling to the righteousness of my Saviour as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they might be saved from the temptations which accompany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction and assist those engaged in enlightening the ignorant.

ITEM 1ST. I give and bequeath to the trustees of the Caldwell Institute, and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North
19 Carolina, and having been incorporated by the legislature of North Carolina) the sum of four thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing, annually or semi-annually, as required during that period. The interest alone of said sum to be applied in payment of the salaries of the professors or instructors in said institute wherever it may be located, provided it be within the said State of North Carolina.

ITEM 2ND. I give and bequeath to Clement C. Read, of the county of Prince Edward, in the State of Virginia, and his executors, administrators and assigns, the sum of four thousand dollars, in trust, for the benefit of the Union Theological Seminary, located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary whenever the sum shall be received by him, which sum shall be appropriated to the endowment of an additional professorship in said seminary. And until said endowment be completed, the interest annually arising from said sum shall be added to the principal or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

ITEM 3RD. I give and bequeath to the trustees of the board of education of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be applied by said board to the education of indigent pious young men for the gospel ministry; but of the principal of this sum, only five hundred dollars shall be used in any one year.

ITEM 4TH. I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them, the sum of four thousand dollars in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the Board of Foreign Missions of the Presbyterian Church in the United States of America, to be applied to the uses and purposes of said board, and under its direction; and the receipt of said treasurer shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum only one thousand dollars shall be used in any one year.

ITEM 5TH. I give and bequeath to the trustees of the Board of Missions of the General Assembly of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be held by the said trustees and their successors forever, to and for the uses and under the direction of the said board of mis-

sions of the said general assembly, according to the provisions of their charter, to be appropriated to domestic missions, and only one thousand dollars of the principal to be used in any one year for that purpose.

ITEM 6TH. I give and bequeath to my executors and the survivors of them the sum of five hundred dollars, in trust, for the benefit of the Raleigh Female Benevolent Society, which sum shall be loaned out, or vested in some productive stock, and the proceeds thereof alone applied annually or semi-annually in the payment of the salary of the teacher of the school, under the care of said benevolent society, provided the said society shall raise a sum annually, which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher; or, if said society should cease to exist, then the proceeds of the above five hundred dollars shall be applied to the payment of a colporteur, to supply religious publications in some destitute parts of North Carolina.

20 ITEM 7TH. It is my will that all my negroes who at the time of my death shall be in the possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period; at the expiration of that time, my highly-esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes; these he is to take at a valuation, giving bonds for the same, payable in ten equal annual instalments; but as I know he is at a great expense to promote the spiritual improvement of his slaves, I desire the expense attending their removal to be paid by my estate. Should John Devereux take any of said negroes, the same terms will be required as in the case of said Leonidas Polk.

ITEM 8TH. I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes:

First. To Miss Louisa Taylor, daughter of Mrs. Eliza Taylor, fifty dollars, annually, during her natural life.

Secondly. To Miss Ellen Anderson, who was brought up by my friend Mrs. Mary Jones, the sum of fifty dollars per annum during her natural life.

Thirdly. To Mrs. Elizabeth Kunis, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow, esqr., of the said town of Newbern, for the benefit of said Elizabeth Kunis during her natural life.

Fourthly. To two girls at the mission school in Ceylon, who bear the names of Catharine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the American Board of Commissioners for Foreign Missions, for their support at the said mission school.

Fifthly. To the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars per annum, to be applied by him in the cause of female education in the West, or Valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly. To Thomas P. Devereux, one hundred and forty dollars per annum, to aid in supporting a teacher (should he think fit to employ one) to give religious instructions to the slaves on the Roanoke River, particularly those in the possession of my descendants.

ITEM 9TH. It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors may deem best. If sold upon credit, a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH. From the funds arising from the sale of the above slaves, and the house and lot in Chapel Hill, it is my will that at the death of Mrs. Eliza Taylor, her daughter Louisa shall receive the further sum of one hundred and fifty dollars, annually during her natural life; or should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum during her natural life, over and above the sum of fifty dollars per annum heretofore provided for her; the same to be paid the said Louisa Taylor by my executors annually.

21 ITEM 11TH. I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William J. Clarke, trustees of the Presbyterian church or society, in the city of Raleigh, or their successors in office, five negroes, viz: Tom, Viney, Priscilla, and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct. But should said church or congregation, in process of time, fail to adhere to the doctrine, order, and form of church government set forth in the confession of faith of the Presbyterian Church in the United States of America, then, and in that case, I direct that the said negroes and their increase shall return to my executors to be distributed according to law; and further, it is my will that if the said church or congregation shall at any time fail to raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then, and in that case, the bequest of said negroes shall be void, and the said negroes, with their increase, shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

ITEM 12TH. I give and bequeath to S. S. Souter, of the borough of Norfolk and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust nevertheless, for the association known by the name of the Seamen's Friend Society, of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest to be void.

ITEM 13TH. I give and bequeath to Elizabeth Lacy, daughter of the Rev. Drury Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years old, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH. In consideration of the faithful services of my female servant Evelina, it is my will that, at my death, she shall be sold to such a person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said Evelina to such person, upon his executing a bond, with good and sufficient security, conditioned

to pay and expend the sum of fifty dollars annually for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties Nash, Wayne, and Johnston; and if the said person selected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl, Evelina, is to make a second choice, and so on, until the same shall be affected and my wishes complied with.

ITEM 15TH. It is my wish that my servant girls, Rebecca, Delia, and Sally, shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale, but at private sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons, my object being that they shall have masters who will treat them properly and not take them out of the State.

ITEM 16TH. Should my debts, at my decease, not exceed two thousand dollars, I give my carriage and horses to my beloved son, Thomas P. Devereux; if otherwise, it is my will and desire that my executors should sell all the stock of horses, cattle, hogs, &c., crops, and farming
22 utensils, and any personal property I may have in the possession of my grandson, John Devereux (negroes excepted), also my carriage and wagon, or any other property of the same description, and pay all my debts; and should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out, and the proceeds applied to the payment of the balance, until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in some other manner, and take the negroes into their possession.

Should it appear, at my decease, that the bequests exceed the amount of funds left, my will is that the first five only shall be curtailed, until brought within the limits of the assets.

It is my further will and desire, and I do so direct and appoint, that if any one or more of the legacies hereinbefore given, or intended to be given by me, should fail to take effect through any informality, or from any other cause, that then the sum so failing shall be added to and form a part of the other legacies, which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke my lawful executors to execute this my last will and testament, according to the true intents of the same; and having full confidence in the integrity and fidelity of my executors, I desire that they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all of which I, the said Frances Devereux, do hereunto set my hand and seal this twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-seven, praying that Almighty God, in His good providence and great mercy, would so overrule and direct, and care for the several bequests herein made that thereby His own glory and the good of His church may be promoted.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, published, and declared by the said Frances Devereux to be her last will and testament, in the presence of us, and in presence of each other do, at her request, subscribe our names as witnesses thereto.

D. Du Pre.

George Simpson.

Exhibit C with original bill.

Frances Devereux's will, dated the 20th day of August, A. D. 1848.

In the name of God, amen, I, Frances Devereux, in the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself.

23 And I would hereby declare that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour, Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance farther than as proofs of my faith. I cast them from me, and cling to the righteousness of my Saviour as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they may be saved from the temptations which accompany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

Item 1st. I give and bequeath to the trustees of the Caldwell Institute, and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina) the sum of two thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually or semi-annually, as required during that period, the interest alone of that sum to be applied to the payment of the salaries of the professors or instructors of said institute, wherever it may be located, provided it be within the State of North Carolina.

Item 2nd. I give and bequeath to Clement C. Read, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of two thousand dollars, in trust for the benefit of the Union Theological Seminary, located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary, whenever the sum shall be received by him, which sum shall be appropriated to the endowment of an additional professorship in said seminary, and until said endowment be completed, the interest annually arising from said sum shall be added to the principal, or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

Item 3rd. I give and bequeath to the trustees of the Board of Educa-

tion of the Presbyterian Church of the United States of America, and to their successors and assigns, the sum of two thousand dollars, to be applied by said board to the education of indigent pious young men for the gospel ministry; but of the principal of the sum, five hundred dollars only shall be used in any one year.

ITEM 4TH. I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them, the sum of two thousand dollars in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the Board of Foreign Missions of the Presbyterian Church in the United States of America, to be applied to the uses and purposes of said board, and under its direction, and the receipt of said treasurer shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum only five hundred dollars shall be so used in any one year.

ITEM 5TH. I give and bequeath to the trustees of the Board of Missions of the General Assembly of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of two thousand dollars, to be held by said trustees and their successors forever, to and for the uses and under the direction of said board of missions of the said general assembly, according to the provisions of their
24 charter, to be appropriated to domestic missions; and only five hundred dollars of the principal to be used in any one year for that purpose.

ITEM 6TH. I give and bequeath to my executors and the survivors of them, the sum of five hundred dollars, in trust, for the benefit of the Raleigh Female Benevolent Society, which sum shall be loaned out or vested in some productive stock, and the proceeds thereof alone applied annually or semi-annually in the payment of the salary of the teacher of the school under the care of said benevolent society, provided the said society shall raise a sum annually which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher; or, if said society should cease to exist, then the proceeds of said five hundred dollars shall be applied to the payment of a colporteur, to supply religious publications in some destitute part of North Carolina.

ITEM 7TH. It is my will that all my negroes who at the time of my death, shall be in the possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period. At the expiration of that time, my highly-esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes; this he is to take at a fair valuation, giving bonds for the same, payable in ten annual installments; the remainder of these negroes to be offered to my grandson, John Devereux, on the same terms before mentioned in the case of Reverend Leonidas Polk, to whom my executors shall pay the sum of five hundred dollars for the removal of his lot of negroes.

ITEM 8TH. I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes:

First. To Miss Eliza Taylor, daughter of Mrs. Eliza Taylor, fifty dollars annually during her natural life.

Secondly. To Miss Ellen Anderson, who was brought up by my friend Mrs. Mary Jones, the sum of fifty dollars annually during her natural life.

Thirdly. To Mrs. Elizabeth Kunis, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow, esqr., of said town of Newbern, for the benefit of said Elizabeth Kunis during her natural life.

Fourthly. To two girls at the mission school in Ceylon, who bear the names of Catherine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the American Board of Commissioners for Foreign Missions, for their support at said mission school.

Fifthly. To the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars per annum, to be applied by him in the cause of female education in the West or Valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly. To Thomas P. Devereux one hundred and forty dollars per annum, to aid in supporting a teacher, should he thing fit to employ one, to give religious instruction to the slaves on the Roanoke River, particularly those in the possession of my descendants.

Should all or any of said annuities or charities lapse, in consequence of the death of the person or persons to whom they should be paid; should the said Society for Promoting Collegiate and Theological Education at the West fail, in process of time, to carry out its specfied object; and should the said Thomas P. Devereux not employ a teacher as above stated, then it is my will that my executors and the survivors of them, pay over such sum or sums to the individual whom the Presbytery of Orange shall appoint to receive the same, which amount shall be employed by said Presbytery of Orange, for the extension of the Redeemer's kingdom in any way which that body shall deem best.

ITEM 9TH. It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors deem best; if sold upon credit, a mortgage must be taken upon the property until payment is made, which payment is to be invested in some productive stock.

ITEM 10TH. From the funds arising from the sale of the negroes above mentioned, and the house and lot in Chapel Hill, it is my will that at the death of Mrs. Eliza Taylor, her daughter Louisa shall receive the further sum of one hundred and fifty dollars annually, during her natural life; or, should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching schools, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum, during her natural life, over and above the sum of fifty dollars per annum heretofore provided for her. The same to be paid to the said Louisa Taylor by my executors annually.

ITEM 11TH. I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William J. Clarke, trustees of the Presbyterian Church or society in the city of Raleigh, or their successors in office,

five negroes, viz, Tom, Viney, Priscilla and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct; but should said church or congregation, in process of time, fail to adhere to the doctrine, order, or form of church government set forth in the confession of faith of the Presbyterian Church in the United States of America, then, in that case, I direct that the said negroes and their increase shall return to my executors, to be distributed according to law; and further, it is my will that if the said church or congregation shall at any time fail to raise annually as the salary of the pastor or minister the sum of six hundred and fifty dollars exclusive of the avails of said negroes given for the benefit of the pastor, then and in that case the bequest of said negroes shall be void, and they, the said negroes, with their increase, shall return to my executors, and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

ITEM 12TH. I give and bequeath to S. S. Souter, of the borough of Norfolk and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust, nevertheless, for the association known as the Seamen's Friend Society of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest is to be void.

ITEM 13TH. I give and bequeath to Elizabeth Lacy, daughter of Rev. Drury Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years of age, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH. In consideration of the faithful services of my female servant Evelina, it is my will that at my death she shall be sold to such
26 person as she may choose for *the* master, and that my executors shall make and execute a good and sufficient title to the said Evelina to such person, upon his executing a bond, with a good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually, for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties of Nash, Wayne, and Johnston, and if the said person selected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl Evelina is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 15TH. It is my wish that my servant girls Rebecca and Delia shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons, my object being to keep them near their relatives.

ITEM 16TH.—It is my will and desire that my executors should sell all the stock of horses, cattle, hogs, &c., crops and farming utensils, and any personal property I have in the possession of my grandson, John Devereux (negroes excepted). Also my carriage and wagon, or any other

property of the same description, and pay all my debts. And should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out, and the proceeds applied to the payment of the balance, until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in some other way, and take the negroes into their possession.

Should it appear at my decease that the bequests exceed the amount of funds left, my will is that the first five only shall be curtailed until brought within the limits of the assets.

It is my further will and desire, and I do so direct and appoint, that if any one or more of the legacies hereinbefore given, or intended to be given, by me should fail to take effect throught any informality, or from any other cause, that then the said sum so failing shall be added to and form a part of the other legacies which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke, my lawful executors to execute my last will and testament according to the true intents of the same, and having full confidence in the integrity and fidelity of my executors, I desire they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all which I, the said Frances Devereux, do hereunto set my hand and seal this twentieth day of August, A. D. 1848.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM J. CLARKE.
CATHARINE E. FULLER.

Codicil.

Since the execution of my last will and testament, I have concluded to make certain alterations and amendments thereto, as contained
27 in the following codicil, which I do hereby constitute a part of my said will, to take effect and be considered as such.

ITEM 1ST. Should my son-in-law, Reverend Leonidas Polk, take families of my negroes, according to item 7th of my last will and testament, then it is my desire, furthermore, that out of the interest due annually on his bonds given for said negroes he retain one hundred and fifty dollars per annum, to be expended for the religious instructions of the negroes after their removal from this State. And, furthermore, if the settlement of my estate will allow of further indulgence, then it is my wish that the said Reverend L. Polk be not pressed to pay the instalments, but be allowed to pay them in his own time, or at such periods as will best suit his convenience.

ITEM 2ND. Having learned that Dr. Simmons J. Baker does not intend to remove from this State, I hereby name and appoint him, together with my respected son-in-law, the Reverend Leonidas Polk, as executors to my last will and testament, in addition to those gentlemen heretofore named and appointed.

ITEM 3RD. The religious instruction of the slaves on the Roanoke River

being a matter which I greatly desire to promote, I hereby earnestly request my executors to secure the services of an efficient, competent clergyman, who will be willing to itinerate up and down the river and preach at the different plantations; and I hereby authorize them to pay said clergyman a liberal allowance for his services during eight months of the year. It is furthermore my wish that he be supplied annually with the publications of the American Tract Society for gratuitous distribution among the families of that region of country.

ITEM 4TH. I give and bequeath to the American Tract Society, instituted in the city of New York, one thousand dollars, to be applied to the charitable purposes of said society.

ITEM 5TH. Some time ago I made an arrangement by which I hoped to secure the payment of two hundred dollars a year to Mrs. Elizabeth Chester, of Weathersfield, Connecticut, for four years, the first payment to be made December the 20th, A. D. 1848. Should any unfor'seen circumstance prevent the remittance of said sum of two hundred dollars per annum for four years, it is my desire that my executors make that amount good to Mrs. Chester for that time, after which she is to receive from them one hundred and fifty dollars per annum during her life.

ITEM 6TH. To my esteemed pastor, the Reverend Drury Lacy, I give and bequeath the sum of fifty dollars, for the purpose of making additions to his library, which is independent of the pastor's library. And whereas in the body of my will I have given to his daughter Betsey a girl named Sarah, and I now see fit to dispose said girl Sarah otherwise, I give and bequeath to said Betsey, in her place, George, a son of my servant Prescilla.

ITEM 7TH. In the body of my will I have given to the school under the care of the Female Benevolent Society the sum of five hundred dollars; in addition to which I hereby bequeath to it my servant girl Sarah, who is to be left entirely at the disposal of Mrs. Colborn until she is twelve years old, after which she is to be hired and the profits of her labor given to the school, provided the annual subscription from the ladies of the town amounts to the sum of one hundred dollars; in case it does not, then it is my will that said Sarah, and the interest of the five hundred dollars, be employed in educating some girl as a teacher, who is to be chosen by those ladies who were last officers of the Female Benevolent Society.

28 ITEM 8TH. I give and bequeath to Mr. Henry Hardie, son of Mrs. Marion Hardie, of this city, the sum of three hundred dollars, to aid him in getting a theological education at Princeton, New Jersey, which sum is to be placed in the hands of Mr. John Primrose, to be paid to said Henry Hardie as his necessities may require. Should this donation lapse in consequence of the death of said Henry Hardie, then it is my will that the above amount be applied to sustain Sabbath schools in destitute places, or to aid in supporting colporteurs.

ITEM 9TH. Having learned that my daughter-in-law, Mrs. S. E. Devereux, declines taking my servant Eveline, who wishes to be sent to her, it is my wish that said Eveline be placed under the care of some lady going to Philadelphia; she is then to be left free to remain in said city, or, if she chooses to return, it is my wish that my executor shall pay her expenses back to this place, where she shall be sold under the following provisions,

to wit: Having chosen an owner, she shall be valued by competent persons, and then sold for one hundred dollars less than such valuation, the purchaser giving bond for the payment of one hundred dollars annually until the whole price is paid; which sum I wish expended each year in the manner designated in item 14th of my last will and testament.

ITEM 10TH. Should Judge Nash accede to my proposal, it is my wish that his drafts be honored, without security, to the amount of five hundred dollars, no interest being required of him for four years.

ITEM 11TH. As my grand-children attain the age of fourteen years I desire that each of them may be furnished by my executors with a copy of the Holy Scriptures, with Scott's or Henry's Commentary; also Dwight's Life of my grandfather, J. Edwards; Wilberforce's Practical View of Religion, Newton's Works, Mason on Self-knowledge, The Great Change, by Redford, and Mason's Spiritual Treasury. I wish these works to be of the largest sizes and best editions—London copies, if they can be procured.

ITEM 12TH. With respect to the girls at the mission school in Ceylon, the annuities cannot lapse, for a successor is selected who takes the name and privileges of the girl removed.

ITEM 13TH. I give and bequeath to my ever-dutiful son, Thomas P. Devereux, my brother's portrait and the minature likeness of his father.

ITEM 14TH. To my beloved daughter, Frances A. Polk, I give the miniature of my mother, the portrait of Mrs. Pollok, in crayon, the large Bible in two volumes, once belonging to my mother, a small silver tea-pot, made for my father, a spoon and fork, commonly used by my brother, the small open spoon with a pointed handle, four *pitchers* of a fox chase, a chest of drawers, and old-fashioned heavy round mahogany table at the plantation, and a pair of old lamps, also at the plantation.

ITEM 15TH. To Mrs. Sarah E. Devereux I give the chandeliers which were brought from France by my brother.

ITEM 16TH. To Hamilton Polk I give the portrait of his father.

ITEM 17TH. To Frances Polk I give the portrait of her mother.

ITEM 18TH. To Frances J. Miller I give a silver tea-pot, cream-pot, sugar bowl and tongs, six dessert-spoons, and six tea-spoons, in trust for her daughter Catharine, should said daughter survive her mother.

ITEM 19TH. To Catharine Edmondston, the Brussels carpet, if she thinks it worth calling for.

ITEM 20TH. Should William J. Clarke go to housekeeping in this State, my granddaughter, Mary B. Clarke, is at liberty to take any articles of household or kitchen furniture as she may wish, except such as I have otherwise disposed of. Should William J. Clarke not become
29 a resident of this State, my will is that William D. Cooke, of this place, shall have the liberty which was given to Mary B. Clarke, and also that the few articles loaned him by me be considered as his property.

ITEM 21ST. I give to my granddaughter, Honoria Cannon, the table-spoons marked "N. D."; two ladles, marked "A. B. P."; the salt-cellars, and all my household linen, except such as I otherwise dispose of, and a set of dimity curtains in the room which I now occupy.

ITEM 22ND. To Mary B. Clarke I give my plated ware, all my glass-ware, and the best Marseilles quilt.

ITEM 23RD. To Mrs. Eliza Primrose I leave the chair covered by herself, together with the tidy presented to me by Miss Parmlee.

ITEM 24TH. From my apparel, I wish my granddaughter, Frances J. Miller, and Mrs. Primrose to select such articles as they may deem proper, to send to Mrs. McPheeters; my common dresses to be sent to E. Kunis, of Newbern; my cloak, bombazine dress, and two summer dresses, to Mrs. Goodwin, as tokens of affectionate remembrance.

ITEM 25TH. Nor would I close without acknowledging my obligations to William D. Cooke, who, during the frequent absence of my son, as far as possible supplied his place. As a small proof of my esteem, I therefore give and bequeath to him the sum of one hundred dollars, in addition to the articles in item 20th of this codicil, which Mary B. Clarke may not take.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and published the 16th day of April, 1849, in presence of—

MARY B. CLARKE.
WILLIAM J. CLARKE.

Suing out of subpœna.

And thereupon, on the 1st day of April, A. D. 1859, the said Frank G. Q. Umstid and Elizabeth J. Devereux Umstid, his wife, and Georgina P. Devereux, sued and prosecuted out of the said circuit court of the United States, by their attorneys aforesaid, a subpœna in the words and figures following, to wit:

Subpœna for T. P. Devereux.

UNITED STATES OF AMERICA,
North Carolina District:

Circuit court, 5th circuit.

The President of the United States to the marshal of the United States for the district aforesaid, greeting:

You are hereby commanded to summon Thomas P. Devereux to be and appear before the honorable the judges of our circuit court, to be held for the district aforesaid, at Raleigh, on the 1st Monday of June next, then and there to answer concerning such things as shall then and there be objected to by Frank G. Q. Umsted, Elizabeth J. D. Umsted, and Georgina P. Devereux; and to do further and receive what the said court shall consider in this behalf, under the penalty of the law.

Herein fail not, and have you then and there this writ.

Witness Hon. Roger B. Taney, Chief Justice of the United States, at Raleigh, the last Monday of November, A. D. 1858.

Issued the 1st of April, A. D. 1859.

[SEAL.] HENRY R. BRYAN,
Clerk of C. C.

Proceedings of June term, A. D. 1859.

On which last-mentioned day, to wit, on the first Monday in June, in

the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-second year, the same being the sixth day in said month, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable Asa Briggs, district judge, presiding.

Return of subpœna.

The said subpœna is returned into court, with endorsements thereon in the words and figures following, to wit: "Service accepted April 6th, 1859. T. P. Devereux."

"A printed copy of the bill was also served at the same time. T. P. Devereux."

Appearance of parties.

Then come the complainants, Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, and Georgina P. Devereux, by their attorneys, Daniel G. Fowle and Ed. Graham Haywood; and the defendants, Leonidas Polk and Frances Ann Polk, his wife, by their attorney, Wm. A. Graham; and the defendant Thomas P. Devereux, by his attorneys, George E. Badger, B. F. Moore, Henry W. Miller, and Patrick Winston, also come, and files his demurrer to the complainants' original bill of complaint, which said demurrer is in the words and figures following, to wit:

Demurrer.

In the circuit court of the United States for the district of North Carolina.
In equity.

The demurrer of Thomas P. Devereux, defendant, to the bill of complaint of Frank G. Q. Umsted and Elizabeth J., his wife, and Georgina P. Devereux, complainants:

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law thereto; and for cause of demurrer saith and showeth that the said complainants have not by their said bill made such a case as entitles them, in a court of equity, to any discharge or relief from or against this defendant, touching the matters contained in the said bill, or any of such matters.

And for a further cause of demurrer this defendant showeth that the scope of the complainant's bill, as appears upon the face thereof, is to have an account of the administration of the estate of the late Frances
31 Devereux, deceased, in the bill mentioned, and such an account cannot be taken upon the matters appearing in the said bill, without an account also of the administration of the estate of the late John Devereux, deceased, in the bill mentioned, and upon the result of such an account of the administration of the estate of the said Frances depends

by the complainant's own showing in the said bill, the pretended demand thereon set up against this defendant, and therefore a personal representative of the said Frances, and also a personal representative of the said John, are necessary parties to the said bill; but yet the said complainants have not made such representative of the said Frances or of the said John a party to the said bill.

Wherefore, and for divers other good causes of demurrer appearing on the said bill of complaint, this defendant doth demur *of* the said bill, and prays the judgment of this honorable court, whether he shall be compelled to make any other or further answer to the said bill, and he prays to be hence dismissed, with his reasonable costs in this behalf sustained.

GEORGE E. BADGER,
P. H. WINSTON,
For the Def't.

We, the undersigned, counsel for the defendant, do hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

GEORGE E. BADGER.
P. H. WINSTON.

Circuit court of the United States for the district of North Carolina.
June term, 1859.

Thomas P. Devereux, the defendant named in the foregoing demurrer, maketh oath that the said demurrer is not put in or interposed for the purpose of delay.

T. P. DEVEREUX.

Sworn to and subscribed before me June 7th, 1859.

HENRY R. BRYAN, *Clerk of C. C.*

Demurrer set down for argument & overruled.

Whereupon the said demurrer is forthwith, by consent, set down for argument, and coming on this present day, to wit, the 7th day of June, A. D. 1859, to be argued before the honorable Asa Biggs, judge presiding, as aforesaid, in the presence of counsel learned, on both sides: Now, upon opening and debate of the matter, and hearing, &c., his honor doth order that the said demurrer be overruled and disallowed.

Motion to amend O. B.

And thereupon, during the same term of the court, upon motion, &c., it was alleged that since the coming in of said demurrer the plaintiffs are advised to amend their bill; and therefore it was prayed that the plaintiffs may be at liberty to amend their bill, as they may be advised, which is ordered accordingly.

Filing of amended bill.

And thereupon, during the same term of the court, the plaintiffs
32 aforesaid, by their attorneys aforesaid, file their amended bill, in the words and figures following, to wit:

Amended bill.

To the honorable the judges of the circuit court of the United States for the district of North Carolina:

Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, both of the city, county, and State of New York, and citizens of said State of New York, and Georgina P. Devereux, of Stratford, in the county of Fairfield and State of Connecticut, and a citizen of said State of Connecticut, bring this their bill against Thomas P. Devereux, of the county of Halifax and State of North Carolina, and a citizen of said State of North Carolina, and the Right Reverend Leonidas Polk, bishop of Louisiana, and Frances Ann Polk, his wife, both of New Orleans, in the county of Orleans and State of Louisiana, and citizens of said State of Louisiana.

And thereupon your orator and oratrixes complain and say that your oratrixes are the only children of George P. Devereux, late of Bertie County, in the State of North Carolina, deceased; that your oratrixes' said father departed this life on the 13th day of May, A. D. 1837; that your oratrix, Elizabeth J. Devereux Umsted, was then in the fourth year of her age, having been born on the 12th day of August, A. D. 1833; that your oratrix, Georgina P. Devereux, was born on the 10th day of August next following her said father's decease; that your oratrixes' said father, by his last will and testament, which was duly proved and allowed, appointed your oratrixes' mother to be their guardian during the period of their infancy.

That your oratrixes' mother, soon after the death of her husband, removed from the State of North Carolina to the State of Connecticut, where she has ever since resided; that your oratrixes resided with their said mother, and were under her sole guardianship and protection during the entire period of their infancy, and your oratrix, Georgina P. Devereux still so resides; that your oratrix, Elizabeth J. Devereux Umsted, intermarried with your orator, Frank G. Q. Umsted, on the 20th day of June, A. D. 1855, and thereupon removed to the State of Missouri, where she resided with her said husband until about the month of November, A. D. 1857, when they removed to the city of New York, where they have since resided.

That the defendants Thomas P. Devereux and Frances Ann Polk, and your oratrixes' father were brothers and sister, being the only children of John Devereux and Frances, his wife, both late of the city of Raleigh, in the county of Wake, in the State of North Carolina, deceased; that the said Frances Devereux, your oratrixes' grandmother, survived the said John Devereux, her husband; that said Frances departed this life on the 3rd day of June, A. D. 1849, leaving her said son and daughter and your oratrixes as representing their deceased father, her sole heirs at law and next of kin.

That said John and Frances Devereux, during their life-time, and on the 3rd day of July, A. D. 1839, by deed of that date, conveyed to the said Thomas P. Devereux and his heirs a large amount of real estate, being all the real estate which had descended to the said Frances from her brother, George Pollok, then late of the county of Halifax and State of North Carolina, deceased; that said conveyance was declared to be upon and subject to the following (among other) charges and trusts:

"First, that the said Thomas P. Devereux and his heirs and assigns

33 shall, on the 1st day of March in each and every year, during the life of the said Frances Devereux, pay to the said Frances, into her own hands or according to her own order, and to her sole and separate use, and subject to her own disposal, as if she were a femme sole and unmarried, the yearly sum of three thousand dollars. * * * Thirdly, that the said Thomas P. Devereux, his heirs or assigns, shall invest for or pay to the said Frances Devereux, at such time, in such portions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal, by will, deed, or writing in the nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture), as if she were a femme sole and unmarried, the sum of fifty thousand dollars."

And for greater certainty a copy of said deed is hereto annexed, marked "A," and your orator and oratrixes pray that the same may be considered a part of this bill.

That a large part of said annual sum of three thousand dollars and of said gross sum of fifty thousand dollars, as your orator and oratrixes are informed and believe, remained unpaid by the said Thomas P. to the said Frances, or according to her appointment, order, or direction, at the time of the decease of the said Frances; and that said Frances, at the time of her deceased, was seized and possessed of a considerable amount of other property, real and personal, including a considerable number of negro slaves.

And your orator and oratrixes, further complaining, say that after the death of said Frances Devereux two paper writings were found, each of them being signed by the said Frances Devereux, and each of them purporting to be her last will and testament; one of said paper writings bearing date the 23rd day of December, A. D. 1847, and the other on the 20th day of August, A. D. 1848. That each of said paper writings commenced as follows:

"In the name of God, amen. I, Frances Devereux, of the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and enacted by any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds, settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself."

That the dispositions contained in both said paper writings consisted chiefly of pecuniary legacies to several charitable institutions, and some small legacies and annuities to female friends of said deceased; that said paper writing bearing earliest date contained a legacy of four thousand dollars to each of five several charitable institutions; that in said paper writing bearing latest date each of the said five legacies was cut down to two thousand dollars; that in other respects said two paper writings were substantially alike; that your orator and oratrixes are informed and believe that said Frances, between the dates of said paper writings, disposed of large sums of money for charitable purposes, and that this was the cause of said five legacies being cut down in said paper writing bearing latest date.

That Frederick Nash, senior, the said Thomas P. Devereux, John Primrose, and William D. Cooke were named as executors in both said paper-writings, and the said Primrose and Nash are now deceased, having died since the appointment of S. W. Whiting as admin-
34 istrator cum testamento annexo. That neither of said paper writings contained any residuary devise or bequest, and that the property left by said Frances was much more than sufficient to pay all her debts, funeral and testamentary expenses, and the legacies and annuities contained in either of said paper writings.

Copies of both said paper writings are for greater certainty hereto annexed, marked B and C, respectively, and your orator and oratrixes pray that the same may be considered a part of this bill.

That your orator or oratrixes have not sufficient knowledge or information to form a belief whether either of said paper writings was the last will and testament of said Frances, nor whether said Frances was, at the date of either of said paper writings, of a sound and disposing mind, memory, and understanding; nor whether either of said paper writings was properly executed as a last will and testament, according to the laws of North Carolina; but they are informed and believe that if the said Frances was of a sound and disposing mind, memory, and understanding at the earliest of the dates above named she was so also at the latest of the dates above named; that the defect in the execution of said paper writings, if any, was the incompetency of one of the attesting witnesses thereto, on account of interest, and that this objection was equally applicable to both said paper writings; and they are also informed and believe that if either of said paper writings was the last will and testament of said Frances it was said paper writing bearing latest date.

And your orator and oratrixes, further complaining, say that soon after the death of said Frances Devereux, the said Thomas P. Devereux, being then on a visit to your oratrixes' mother, in the State of Connecticut, informed her that he intended to contest the probate of both said paper writings, and expressed great confidence that said contest would be successful, thereby inducing her to believe that there was no conflict of interest between the said Thomas P. Devereux and your oratrixes, and that their interests would be protected, though she should take no active part in contesting the probate of said paper writings.

That soon after the said T. P. Devereux's return to the State of North Carolina he wrote to your oratrixes' mother, saying that the probate of said paper writings were about to be contested by him, and requesting her to join with him in behalf your oratrixes; that she, in reply to said communication, expressed reluctance to joining in said contest, from feelings of delicacy; but declared her willingness to join if the said Leonidas Polk and Francis Ann, his wife, also joined; but she, as your orator and oratrixes are informed and believe, gave the said T. P. Devereux no authority whatever to act on behalf of your oratrixes.

That the said T. P. Devereux, without any further communication with your oratrixes' mother, and without any authority in that behalf, pretended to employ William H. Haywood, jr., then a counsellor at law, practicing in the State of North Carolina, to appear for your oratrixes, and contest the probate of said paper writings.

That at a court of pleas and quarter sessions, begun and held at the

court-house, in the city of Raleigh, within and for the county of Wake, on the third Monday (the 26th day) of August, A. D. 1849, said paper writings were propounded by said William D. Cooke, one of the executors therein named, for probate, as the last will and testament of said Frances Devereux, deceased; that said paper writings were thereupon filed in said courtand an order made that subpœnas issue to the subscribing wit-
35 nesses, and that notice issue to the next of kin of said deceased, citing them to be and appear at the next court, to hear the proceedings of said court in respect to the probate of said paper writings as the last will and testament of said deceased.

That on the same day, the said William H. Haywood, jr., procured himself, by an order of said court, to be appointed guardian ad litem for your oratrixes, and to defend their rights and interests in said proceeding, and caused it to be stated on the record of said court that said order was made at the instance of their mother, who resides with them in Connecticut, which statement, as your orator and oratrixes are informed and believe, was made at the suggestion and upon the authority of the said Thomas P. Devereux, and was entirely false.

That the said Thomas P. Devereux, in entire contradiction to what he had so as aforesaid stated and represented to your oratrixes' mother, and induced her to believe, gave out and represented in the State of North Carolina, and to the persons and institutions interested under said paper writings, as legatees, that he took no part in said proceedings, but was entirely neutral, and that the probate of said paper writings was to be contested by your oratrixes alone; and accordingly he admitted notice of said proceedings, but did not appear therein.

That during the pendency of said proceedings, the said Thomas P. Devereux entered into negotiations with said charitable institutions, the principal legatees in said paper writings, for the purchase of their respective legacies; that the said William H. Haywood, jr., while professing to act for your oratrixes in said proceedings, acted as the attorney and counsel of said Thomas P. Devereux in said negotiations, and as such conducted the correspondence between the said legatees and the said Thomas P. Devereux; that the said Haywood, acting as such attorney and counsel, made a proposition of said legatees to the effect that said Thomas P. Devereux would pay to each of them the sum of two thousand dollars, in consideration that they would assign and transfer to him, for his own use and benefit, all their claims, rights, and interest under said paper writings. That while said negotiations were pending and before said proposition was accepted, such proceedings were had in said court of pleas and quarter sessions that, on the third Monday in August, A. D. 1850, upon an issue awarded to try whether said paper writings or either of them was the last will and testament of said Frances Devereux, deceased, it was found by a jury duly summoned, sworn, and empanelled to try said issue, that neither of said paper writings was the last will and testament of said Frances; and thereupon judgment was rendered accordingly, from which judgment the said Cooke prayed an appeal to the next superior court of law for Wake County, which was granted and the appeal bond waived.

And your orator and oratrixes, further complaining, say that, soon after said verdict and judgment, in said court of pleas and quarter sessions, the said charitable institutions accepted said proposition of Thomas P.

Devereux, and thereupon respectively executed and delivered to him a deed or instrument in writing, purporting to assign, convey, set over, and release to him all rights and interests which they had under either of said paper writings, and empowering him to recover and collect the same to his own use.

That afterwards, and during the pendency of said appeal, and just before the same was tried, the said William D. Cooke, the appellant, upon motion made in said superior court, obtained leave to withdraw from said suit altogether, and accordingly his name was stricken therefrom;
36 and thereupon the said Thomas P. Devereux, one of the executors named in said paper writings, became a party to said suit, as executor and appel'ant, in the place and stead of said Cooke.

That afterwards such proceedings were had in said superior court, on said appeal, that at a special term of said court begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of July, A. D. 1852, upon an issue whether either of said paper writings was the last will and testament of said Frances Devereux, deceased, a verdict was obtained by the said Thomas P. Devereux that said paper writing bearing earliest date was her last will and testament; whereupon it was ordered that a procedendo issue to said court of pleas and quarter sessions to admit to probate said last mentioned paper writing, and to have duly qualified Thomas P. Devereux, the executor therein named.

That said Thomas P. Devereux never informed your oratrixes' mother that he had employed said Haywood to act for them, and neither said Devereux nor said Haywood ever informed her as to said proceedings in the court of pleas and quarter sessions, or on said appeal, nor consulted her in reference thereto, and she remained in total ignorance thereof, except as she occasionally and accidentally received information from other sources.

That your oratrixes' mother, being on a visit to North Carolina, during the pendency of said appeal, and after the purchase of said legacies by said Devereux, sought an interview with said Haywood, which the said Haywood declined, alleging that he did not recognize her in the transaction; that he acted for her children; although the said Haywood well knew that she had no personal interest in the estate of said Frances Devereux, and much less any interest in conflict with the interest of her children. That on the same visit the said Devereux informed your oratrixes' mother, in answer to her inquiries, that it would be wholly immaterial to your oratrixes whether said paper writings were admitted to probate or not, as he intended in any event to carry out his mother's charitable designs; whereas in truth he had already purchased up the bulk of said charitable legacies, and he alone was mainly interested in sustaining said paper writings or either of them.

That, as your orator and oratrixes are informed and believe, said appeal and the proceedings thereon were entirely under the control of said Thomas P. Devereux; that said Haywood, so far as he acted at all in said proceedings, acted entirely under the direction and according to the wishes of said Devereux; and that your oratrixes were in fact wholly unrepresented in said proceedings; and that said proceedings were entirely irregular and fraudulent.

That the sole purpose of said Thomas P. Devereux, in conducting said

proceedings and in purchasing said legacies, was to deprive your oratrixes of their just rights, as next of kin of said Frances: that said charitable institutions received all that they were legally and justly entitled to, as the said Devereux well knew; and it was only by depriving your oratrixes of their just rights, as aforesaid, that said Devereux could derive any benefit from said purchase. And your orator and oratrixes are advised that said legacies will be deemed to have been paid off and extinguished for the benefit of the estate of said Frances, and that said Devereux will not be entitled to any benefit from the purchase of said legacies, except in common with your oratrixes. And your orator and oratrixes further say that said Thomas P. Devereux, at the time of the transactions hereinbefore stated, stood in a relation of great confidence to your oratrixes and their
37 mother; that he was their nearest male relative in North Carolina to whom they could look for advice and protection; that your oratrixes' mother knew him to be a lawyer of superior knowledge and skill, and placed implicit reliance upon whatever he told her; all of which the said Devereux well knew.

And your orator and oratrixes, further complaining, say that at a court of pleas and quarter sessions begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of November, A. D. 1852, the said paper writing bearing earliest date having been previously admitted to probate and recorded in said court in pursuance of the procedendo hereinbefore referred to, the said Thomas P. Devereux appeared in open court by his attorney in fact, George W. Mordecai, and pretended to renounce his office of executor of the last will and testament of said Frances Devereux, deceased; whereupon one S. W. Whiting was appointed administrator of said Frances, with the will annexed. But your orator and oratrixes are informed and believe that said Thomas P. Devereux intermeddled with the assets of said deceased, both before and after his pretended renunciation, and had the entire and exclusive control and administration thereof; that he took possession of said assets immediately upon the decease of said Frances, retained them in his possession, disposed of them from time to time, and converted them to his own use according to his will and pleasure; and, especially, that on or near the seventh of October, A. D. 1852, the said Thomas P. Devereux, before the appointment of Whiting as administrator, with the will annexed, caused certain slaves belonging to the estate of the said Frances Devereux, deceased, amounting to the number of fifty-seven, to be appraised and divided between the said Devereux and the other defendants; that said appraisal and division were made after the death of William H. Haywood, jr., your oratrixes' pretended guardian ad litem; and that the said Devereux has now in his possession, or in the possession of his attorney or agents, the original paper, or a copy thereof, containing the details of said appraisal and division; that said Whiting was appointed by the procurement of said Thomas P. Devereux, and as a mere form, the said Devereux becoming his bondsman; that he either never acted at all in the administration of said assets or acted entirely under the direction of said Devereux; that said Whiting never returned any inventory nor rendered any account of his administration, and is now deceased.

That said Devereux's renunciation of his executorship, as your orator and oratrixes are informed and believe, was a contrivance on his part, in

order to avoid being called to account by your oratrixes; and that he procured said renunciation to be accepted by a concealment and suppression of the facts herein stated; and your orator and oratrixes are advised that said renunciation, as to them, is wholly void and of no effect.

And your orator and oratrixes, further complaining, say that they are informed and believe that said Frances Devereux, during her life made large settlements upon the son Thomas P. Devereux, and her daughter Frances Ann Polk; and your orator and oratrixes are advised that said settlements or advancements are to be accounted for in ascertaining the share or portion of the estate of said Frances to which your oratrixes are entitled. And your orator and oratrixes are informed and believe that upon such accounting it would appear that your oratrixes, as representing their late fathers, are entitled to all the property which the said Frances left undisposed of.

38 And your orator and oratrixes, further complaining, say that your oratrixes being so entitled as aforesaid, have frequently, and in a friendly manner, by themselves and others, applied to the said Thomas P. Devereux, and requested him to come to an account with them for the real and personal estate and effects of their said grandmother, deceased, to which she was entitled as aforesaid, and to pay to them the clear residue thereof; and they well hoped that said Devereux would have complied with such their request, as in justice and equity he ought to have done.

But now, so it is, may it please your honors, that the said Thomas P. Devereux absolutely refuses to comply with such your oratrixes' request, sometimes pretending that said Frances left barely sufficient property to pay her debts and legacies; at other times pretending that the property of said Frances, other than said sum of fifty thousand dollars, over which she had a power of appointment, was first to be applied to the payment of her debts and legacies, leaving said sum to lapse for his benefit; at other times pretending that the whole or nearly the whole of said sum of fifty thousand dollars, and said annual sum of three thousand dollars, was paid to the said Frances, or according to her appointment, during her life; at other times pretending that he had a right to purchase, and did purchase, said charitable legacies for his own benefit, and that he has a right to receive out of the estate of said Frances, on account of said legacies, twice the amount that he paid for the same; at other times pretending that the said Frances Devereux made no advancements, during her life, to himself and to said Frances Ann Polk, or, if she did, that said advancements are not to be accounted for in ascertaining the distributive share of your oratrixes in the estate of said Frances; at other times pretending that he never accepted the office of executor, nor intermeddled with the assets of said Frances, or, if he did, that his renunciation was nevertheless good and valid, and that he is not liable to be called to account by your oratrixes; whereas your orator and oratrixes expressly charge the contrary of each and every of said pretences to be true.

All of which actings, doings, and pretences of said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your oratrixes. To the end, therefore, that the said defendants may, upon their several and respective oaths, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, a

full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were here repeated, and they were particularly interrogated thereto; and more especially that the said Thomas P. Devereux may, in manner aforesaid, answer and set forth whether a large part of said annual sum of three thousand dollars, and said gross sum of fifty thousand dollars, did not remain unpaid by the said defendant, either to the said Frances or her appointees, at the time of her death, and what part and how much in particular of said sums so remained unpaid; and whether the said Frances, at the time of her decease, was not seized and possessed of a considerable amount of other property, real and personal, and how much in particular of each; and whether her personal property did not include a considerable number of negro slaves, and how many in particular and of what else in particular it consisted; and whether her property was not much more than sufficient to pay all her debts and legacies, and how much more; and whether he did not make to your oratrixes' mother the several statements and representations hereinbefore set forth, or what other statements and representations in that be-
39 half, and at the several times and upon the several occasions hereinbefore stated, or at what other times and on what other occasions; and whether he did not write to your oratrixes' mother at the time and to the effect hereinbefore stated, or at some other time, and to a similar effect; and whether your oratrixes' mother did not answer his said letter to the effect hereinbefore stated or to what other effect; and whether he did not profess to employ William H. Haywood, jr., to act for your oratrixes as hereinbefore stated, or how otherwise; and whether in so doing, he acted under any and what authority; and whether he did not give out and represent in the State of North Carolina, and to the persons and institutions interested under said paper writings, as legatees, that he took no part in contesting the probate of said paper writings, and that the probate of said paper writings was to be contested by your oratrixes alone; and whether did not enter into negotiations to purchase said legacies, at the time and in the manner hereinbefore stated, or how otherwise; and whether the said William H. Haywood, jr., did not act as his attorney and counsel in such negotiations, and as such conduct the correspondence between the said Devereux and the said legatees, or how otherwise; and whether said Haywood did not, as such attorney and counsel, make a proposition to said legatees to the effect hereinbefore stated, or how otherwise; and whether said Devereux ever informed your oratrixes' mother that he had employed said Haywood to act for your oratrixes, or ever informed her as to said proceedings in said court of pleas and quarter sessions, or on said appeal, or ever consulted her in reference thereto, and, if so, when and how; and whether the said Devereux, both before and after his pretended renunciation of his executorship, did not intermeddle with the assets which were of said Frances, and control and administer the same, in the manner and to the extent hereinbefore stated, or in some other and what manner, and to some other and what extent; and whether said Whiting ever acted in the administration of said assets, and, if so, to what extent; and whether said Frances Devereux did not, during her life, make large advancements to the said Thomas P. Devereux and to the said Frances Ann Polk, and to what amount in particular.

And that the said defendant may set forth a full, true, and just inven-

tory and account of all and singular the goods, chattles, real and personal estate, and effects whatsoever which the said Frances Devereux was seized or possessed of, interested in, or entitled to at the time of her death, and all the particulars whereof the same consisted, including said sum of fifty thousand dollars, said annual sum of three thousand dollars, and the quantities, qualities, full, real, and true values of all and every such particulars; and whether all or some and which of said particulars have not, and when, been possessed or received by or come to the hands of him, the said defendant, or of some and what person by his order or for his use; and how and in what manner, and when and where, and by and to whom, and for how much, the same and every or any and what parts or part thereof have or hath been sold or disposed of; and whether any and what parts thereof, and to what value and amount, now remain indisposed of, and what has become thereof; and also a particular account of all and every the debts whatsoever which were justly due and owing from the said Frances Devereux at the time of her death, and to whom and for what and on what securities, if any, the same were respectively due, and whether any and what sums of money have been since paid in or towards the discharge of all or any and which of the said debts, and when and by whom and to whom and for what, and whether any and what sums or sum of money do or doth now remain unpaid on account thereof; and whether the said defendant hath not in his possession or power divers or some and what books, accounts, books of accounts, letters, copies of letters, and extracts of letters, memoranda and writings relating to the matters hereinbefore mentioned, or some or one and which of them, and that he may set forth a list or schedule thereof, and may produce the same according to the rules and practice of this court; and whether the said defendant hath now in his possession or power all such of the aforesaid particulars as at any time have or hath been in his possession or power, and if not then that he may set forth what has become thereof, and in whose possession or power the same were when he last saw or heard of them respectively.

And that an account may be taken of the real and personal estate and effects of the said Frances Devereux possessed by or come to the hands of the said defendant, or to the hands of any other person or persons by his order or to his use, or which but for his wilful default or neglect might have been possessed or received by him, including said sum of fifty thousand dollars, and said annual sum of three thousand dollars, and also an account of the said Frances' funeral expenses, debts, and legacies, and that the said Frances' real and personal estate may be applied to the payment thereof in a due course of administration, and that the residue and clear surplus thereof may be ascertained and your oratrixes' just share and proportion thereof decreed to be paid to them. And that your oratrixes have such further or other relief in the premises as the nature and circumstances of their case may require, and to your honors shall seem just.

May it please your honors to grant unto your orator and oratrixes a writ of subpœna, to be directed to the said Thomas P. Devereux, Leonidas Polk, and Frances Ann Polk, his wife, commanding them, and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors in said court, and then and

there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, shall ever pray, &c.

FRANK G. Q. UMSTED.
ELIZABETH J. DEVEREUX UMSTED.
GEORGINA P. DEVEREUX.

Exhibit A, with amended bill.

Deed from John and Frances Devereux, his wife, to Thomas P. Devereux and his heirs, July 3rd, A. D. 1839.

This indenture, made the 3rd day of July, in the year of our Lord one thousand eight hundred and thirty-nine, between John Devereux, esq'r, of the county of Wake, and Frances Devereux (formerly Pollok), his wife, of the one part, and Thomas P. Devereux, of the same county (son of the said John and Frances), of the other part, witnesseth:

That whereas George Pollok, esq'r, late brother of the said Frances, hath recently departed this life, intestate, unmarried, and without issue, leaving the said Frances and the children of a deceased half-sister, on the part of his mother, his heirs at law; and was seized in fee-simple at the time of his death of divers messuages, tracts, lots, and parcels
41 of land, situate in the counties of Orange, Halifax, Northampton, Martin, Bertie, Craven, Jones, and elsewhere in the State of North Carolina, of which land some had been transmitted by descent, and derived by gift, devise, or settlement to the said George from his paternal ancestors, and have now, by his death, descended upon the said Frances as the sole heiress of the said George, on the part of his father; and others of the said lands were purchased by the said George during his life, and now, by his death, have descended upon the said Frances and the said children of his said deceased sister, as tenants in common; the said Frances entitled to one undivided moiety, and the said children, as representing their mother, together entitled to the other undivided moiety thereof; and whereas the said John and Frances are minded to settle and assure all the said lands and real estate which have so accrued to the said Frances, in the manner, and to and for the uses, and trusts, and purposes hereinafter expressed and declared:

Now, therefore, in consideration of the premises and of one dollar by the said Thomas to the said John and Frances in hand paid, and for divers other good causes and considerations, they, the said John Devereux and Frances, his wife, have given, granted, bargained, and sold, and do, by these presents, give, grant, bargain, and sell, unto the said Thomas P. Devereux, and his heirs, all the said messuages, tracts, lots, and parcels of land situate in the counties above named or elsewhere, which, on the death of the said George Pollok, descended upon the said Frances as his only heiress on the part of his father, and also all the moiety, share, and portion of the said Frances in, of, and to all the said messuages, tracts, lots, and parcels of land situate in the said counties or elsewhere which have descended upon the said Frances and the said children of the said deceased sister of the said George, as tenants in common, together with all the right,

title, interest, property, and estate of them, the said John and Frances, and each of them, of, in, and to the same, & all other the land and real estate wheresoever situate which were of the said George Pollok at his death, to have and to hold the same, with the appurtenances, unto him, the said Thomas P. Devereux, his heirs and assigns, forever, upon and subject, nevertheless, to the following charges, uses, trusts, restrictions, directions, provisions, and limitations, that is to say:

First. That the said Thomas P. Devereux and his heirs and assigns shall, on the first day of March, in each and every year during the life of the said Frances Devereux, pay to the said Frances, into her own hands, or according to her own order and to her sole and separate use, and subject to her own disposal, as if she were a femme sole and unmarried, the yearly sum of three thousand dollars.

Secondly. That the said Thomas, his heirs and assigns, shall pay to the said John Devereux the sum of ten thousand dollars, one moiety of which to be paid on the first day of March, A. D. 1841, and the other moiety one year thereafter; but it is understood that should the said John receive from the said Thomas, as administrator of the said George Pollok, any of the effects which were of the said intestate, then the price thereof shall be deemed and taken in payment, or part payment, of the said sum of ten thousand dollars.

Thirdly. That the said Thomas P. Devereux, his heirs or assigns, shall invest for, or pay to, the said Frances Devereux, at such times, in such proportions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal by will, deed, or writings in nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture) as if she were a
42 feme sole and unmarried, the sum of fifty thousand dollars; but if the said sum of money, or any part thereof, shall remain unpaid, or shall not be invested during her life, and if the said Frances shall not by deed or will or writing in nature thereof, or by some other act, give, grant, dispose, or direct any payment, investment, or application of the same, then the said sum of money, or so much thereof as shall remain not paid, given, granted, disposed, or directed to be invested, paid, or applied shall be considered as lapsing, and the charge thereof as extinguished for the benefit of the said Thomas.

Fourthly. That the said Thomas P. Devereux, his heirs or assigns, shall pay to Elizabeth Devereux and Georgina Devereux, infant children of the late George P. Devereux (son of the said John and Frances) by his wife Sarah Elizabeth, each, the sum of eleven thousand dollars, to be paid to them respectively on attaining full age, or marriage, with interest thereon after the first day of March, A. D. 1842, as follows, that is to say, for five years thereafter at the rate of three per centum per annum, and then afterwards at the usual rate of six per centum per annum, payable on the first day of March, in each and every year. And should one of the said children die unmarried and within age, then one moiety or half part of the said sum of money so directed to be raised for her shall be paid to the said Sarah Elizabeth, her mother, for her own use, if she shall be living at the death of such child, and the other moiety or half part shall lapse, and the charge thereof be extinguished for the benefit of the said Thomas; and in like manner, should the other of the said children die unmarried and within

age, one moiety or half part of her portion shall be paid to the said Sarah Elizabeth (if then living) for her own use, and the residue thereof shall lapse, and the charge be extinguished for the benefit of the said Thomas; and should the event on which the said Sarah Elizabeth will become entitled to the moieties of the said sum, or either of them, happen after the first day of March, A. D. 1842, then the same shall be payable to her immediately; (if before) then on that day. But should it happen that at the death, unmarried and within age, of both or either of the said children, their mother shall not be alive, so as to take moiety of the portion or portions of such child or children, the whole thereof shall lapse, and the charge be extinguished for the benefit of the said Thomas. And it is hereby declared that the said Thomas, his heirs or assigns, may, at his or their discretion, anticipate the times for paying the said two sums of money, and may, before the sums or either them shall become due and payable, pay the whole or any part thereof to any person by law authorized to receive the same, on behalf of the said children or either of them. And as the said John and Frances have entire confidence in the said Sarah Elizabeth, it is hereby expressly declared that she may receive, and the said Thomas may make to her any payment, on account of her said children or either of them, and her receipts for any such payments, whether of principal or interest, shall be a full acquittance of the said Thomas.

Fifthly. That whereas the said Sarah Elizabeth, as the personal representative of her late husband, is indebted to Collin Clarke in the sum of six thousand dollars, the said Thomas is immediately to assume upon himself the said debt, to release her therefrom, and to pay the same.

Sixthly. That the said Thomas P. Devereux, his heirs and assigns, shall pay to Frances Ann Polk, wife of the Right Reverend Leonidas Polk, and daughter of the said John and Frances, the sum of fifty thousand dollars ($50,000), to be paid in equal annual instalments of five
43 thousand dollars, the first payment to be made on the first day of March, A. D. 1842 (one thousand eight hundred and forty-two), and the said Thomas shall be charged with interest on the said sum of fifty thousand dollars, and such portions thereof as may from time to time remain unpaid, as follows, that is to say: For five years from and after the first day of March, A. D. 1842, at the rate of 3 (three) per centum per annum, and thenceforward at the usual rate of six per centum per annum; provided always that the said Thomas P. Devereux may, at his discretion, pay and discharge the said sum of money, or any part thereof, or any instalment or part thereof, from time to time, and at any time before the same shall become payable; and provided also, and it is hereby declared and directed, that one moiety or half part of the said sum of fifty thousand dollars shall be paid into the proper hands of the said Frances Ann Polk, or otherwise be vested, held, or disposed of to and for the sole and separate use of the said Frances Ann, without being in any manner subject to any charge, release, assignment, or control of her present or any future husband, nor to pass to nor vest in the personal representative of such husband, but to be in all respects subject to her order or disposal, and to pass, at her death, if then undisposed of, as if she were a feme sole and unmarried; and provided further, and it is hereby directed, that, should the said Leonidas and Frances Ann, at any time on or before the first day of March, A. D. 1841, elect to take lands instead of the said sum of fifty

thousand dollars, and also to take negroes instead of a like sum directed to be raised for the said Frances Ann by deed (bearing even date with these presents, from the said John Devereux to the said Thomas P. Devereux, as will appear by reference thereto), and notify the said Thomas of such election to take lands and slaves instead of the said two sums of money; or should the said Thomas, on or before the said first day of March, A. D. 1841, elect, and notify the said Leonidas and Frances Ann of his election, to give lands and slaves instead of the said two sums of money, then, on the first day of January, A. D. 1842, there shall be allotted for the said Frances Ann Polk, in fee-simple, a share or portion of the lands hereby conveyed and assumed of the full value of fifty thousand dollars, and the legal title of the same shall be made to or for the said Frances Ann, and the charge for the said money shall thereby cease and determine; and of the lands so allotted or conveyed for the said Frances Ann, one moiety in value shall be properly assured to her sole and separate use and subject to her own disposal, as if she were a feme sole and unmarried, free from all control or interest of her present or any future husband.

Seventhly. That should the personal estate of the said George Pollok prove insufficient to pay and satisfy all his just debts, and by reason thereof there should remain any debt or debts of the said George Pollok properly chargeable on his real estate, the said Thomas shall pay and satisfy the proportion thereof which ought justly to be borne by the lands descended to the said Frances Devereux, and hereby conveyed to the said Thomas. And the said John and Frances Devereux do hereby declare all the foregoing sums of money, payments, and duties directed to be paid and discharged, to be express charges and liens upon the real estate hereby assured, and subject thereto, and of the performance and satisfaction thereof, they, the said John and Frances Devereux, do hereby declare that he, the said Thomas, his heirs and assigns, shall hold all the lands and real estate hereinbefore described and granted upon, and to the uses, trusts, and purposes
44 following, that is to say: Upon trust for his own use and benefit during his natural life, and no longer, and, from and after his death, upon trust for the payment and satisfaction and to stand charged with the payment and satisfaction of all and every the just debts which the said Thomas may owe at the time of his death, and subject thereto upon trust for any one or more of the children (born or to be born) of the said Thomas, their wives or husbands, for such estates, upon such trusts, to such uses, and subject to such charges, conditions, and restrictions as he, the said Thomas, shall, by deed or will, direct, limit, and appoint; and should the said Thomas make an appointment to or in favor of more than one of his children, sons-in-law or daughters-in-law, it is hereby declared that they shall take in such proportions in all respects as he shall declare, and that no disproportion of value shall be deemed or taken (however great such disproportion may be) to make the said appointment illusory, or in any manner to defeat the same, but that his power shall be absolute and without restriction to appoint the whole to one in exclusion of the residue, to some in exclusion of the residue, or to all; and if to more than one or to all, then with such difference as he may please to make between them, though to some he should appoint a mere nominal portion or value; and in default or for want of any such appointment, then upon trust for the children of the said Thomas, who

shall survive him, and their heirs, share and share alike, in fee-simple; and should any child of the said Thomas die during the life of the said Thomas, leaving issue which shall survive the said Thomas, such issue shall stand in the place of such child, and take the portion or share that would by such child have been taken upon his or her surviving the said Thomas. And it is further declared that the issue of any child of the said Thomas shall (after the death of such child) be deemed and taken to all intents and purposes to be within the power of appointment above given to the said Thomas. And whereas it will be necessary to make partition of the said lands and real estate held in common, as above stated; and whereas it may be beneficial to both the parties to the said partition to make exchanges by assigning lands, which descended upon the said Frances solely, to the said children of the said deceased sister of the said Pollok, and to receive instead thereof lands so held in common, and to make other arrangements (which cannot be foreseen and specified) in order to give as far as possible to the parties to the said partition, respectively, allotments of land compact and convenient. It is therefore hereby declared and provided that the said Thomas P. Devereux (with the assent of the said John and Frances during their lives, and absolutely and at his sole will and discretion after their death) shall have full power to make such partition, in such manner as he may deem most suitable, proper, and convenient, to exchange lands of which the said Frances is sole seized, for lands held in common as aforesaid, and in all other respects to settle and arrange the said partition as he shall deem best, and what he shall so do, settle, and arrange shall be absolutely and to all purposes binding, as if he were the owner of the whole in fee-simple, without being subject to any trust, use, or charge whatever, but he shall hold any lands which he may acquire by such exchanges or other arrangements upon the trusts hereinbefore declared. And it is further declared that the said Thomas, his heirs and assigns, shall have power, in order to raise any of the sums of money herein directed to be paid, to sell any parts or portions of the lands hereby granted. And whereas circumstances which cannot be foreseen and expressly provided for, may make it expedient that the said lands and real estate (after all the above charges have been paid, satisfied, and extinguished) should be charged with debts, or be exchanged, sold, and disposed of, and the proceeds otherwise invested upon the trusts aforesaid; therefore, it is expressly declared that the said Thomas P. Devereux shall have ample and full power and authority from time to time, and at all times, at his own will and pleasure, by any proper deeds or assurances, to charge with the payment of any just debt or debts of the said Thomas, or to grant, sell, and exchange all or any part of the said lands and real estate, and to invest the proceeds of such sale or sales in other funds, real or personal, he, the said Thomas, holding any lands which he may acquire by exchange, and any funds, real or personal, in which he may make any such investment, upon the trusts, and with the power herein declared, touching the lands which he may so grant, sell, or exchange, and any and every such grant, sale, exchange, and disposition shall pass the title discharged of any use or trust hereby declared for any the family of the said Thomas.

In witness whereof the said John Devereux and Frances, his wife, and

thousand dollars, and also to take negroes instead of a like sum directed to be raised for the said Frances Ann by deed (bearing even date with these presents, from the said John Devereux to the said Thomas P. Devereux, as will appear by reference thereto), and notify the said Thomas of such election to take lands and slaves instead of the said two sums of money; or should the said Thomas, on or before the said first day of March, A. D. 1841, elect, and notify the said Leonidas and Frances Ann of his election, to give lands and slaves instead of the said two sums of money, then, on the first day of January, A. D. 1842, there shall be allotted for the said Frances Ann Polk, in fee-simple, a share or portion of the lands hereby conveyed and assumed of the full value of fifty thousand dollars, and the legal title of the same shall be made to or for the said Frances Ann, and the charge for the said money shall thereby cease and determine; and of the lands so allotted or conveyed for the said Frances Ann, one moiety in value shall be properly assured to her sole and separate use and subject to her own disposal, as if she were a feme sole and unmarried, free from all control or interest of her present or any future husband.

Seventhly. That should the personal estate of the said George Pollok prove insufficient to pay and satisfy all his just debts, and by reason thereof there should remain any debt or debts of the said George Pollok properly chargeable on his real estate, the said Thomas shall pay and satisfy the proportion thereof which ought justly to be borne by the lands descended to the said Frances Devereux, and hereby conveyed to the said Thomas. And the said John and Frances Devereux do hereby declare all the foregoing sums of money, payments, and duties directed to be paid and discharged, to be express charges and liens upon the real estate hereby assured, and subject thereto, and of the performance and satisfaction thereof, they, the said John and Frances Devereux, do hereby declare that he, the said Thomas, his heirs and assigns, shall hold all the lands and real estate hereinbefore described and granted upon, and to the uses, trusts, and purposes
44 following, that is to say: Upon trust for his own use and benefit during his natural life, and no longer, and, from and after his death, upon trust for the payment and satisfaction and to stand charged with the payment and satisfaction of all and every the just debts which the said Thomas may owe at the time of his death, and subject thereto upon trust for any one or more of the children (born or to be born) of the said Thomas, their wives or husbands, for such estates, upon such trusts, to such uses, and subject to such charges, conditions, and restrictions as he, the said Thomas, shall, by deed or will, direct, limit, and appoint; and should the said Thomas make an appointment to or in favor of more than one of his children, sons-in-law or daughters-in-law, it is hereby declared that they shall take in such proportions in all respects as he shall declare, and that no disproportion of value shall be deemed or taken (however great such disproportion may be) to make the said appointment illusory, or in any manner to defeat the same, but that his power shall be absolute and without restriction to appoint the whole to one in exclusion of the residue, to some in exclusion of the residue, or to all; and if to more than one or to all, then with such difference as he may please to make between them, though to some he should appoint a mere nominal portion or value; and in default or for want of any such appointment, then upon trust for the children of the said Thomas, who

shall survive him, and their heirs, share and share alike, in fee-simple; and should any child of the said Thomas die during the life of the said Thomas, leaving issue which shall survive the said Thomas, such issue shall stand in the place of such child, and take the portion or share that would by such child have been taken upon his or her surviving the said Thomas. And it is further declared that the issue of any child of the said Thomas shall (after the death of such child) be deemed and taken to all intents and purposes to be within the power of appointment above given to the said Thomas. And whereas it will be necessary to make partition of the said lands and real estate held in common, as above stated; and whereas it may be beneficial to both the parties to the said partition to make exchanges by assigning lands, which descended upon the said Frances solely, to the said children of the said deceased sister of the said Pollok, and to receive instead thereof lands so held in common, and to make other arrangements (which cannot be foreseen and specified) in order to give as far as possible to the parties to the said partition, respectively, allotments of land compact and convenient. It is therefore hereby declared and provided that the said Thomas P. Devereux (with the assent of the said John and Frances during their lives, and absolutely and at his sole will and discretion after their death) shall have full power to make such partition, in such manner as he may deem most suitable, proper, and convenient, to exchange lands of which the said Frances is sole seized, for lands held in common as aforesaid, and in all other respects to settle and arrange the said partition as he shall deem best, and what he shall so do, settle, and arrange shall be absolutely and to all purposes binding, as if he were the owner of the whole in fee-simple, without being subject to any trust, use, or charge whatever, but he shall hold any lands which he may acquire by such exchanges or other arrangements upon the trusts hereinbefore declared. And it is further declared that the said Thomas, his heirs and assigns, shall have power, in order to raise any of the sums of money herein directed to be paid, to sell any parts or portions of the lands hereby granted. And whereas circumstances which cannot be foreseen and expressly provided for, may make it expedient that the said lands and real estate (after all the above charges have been paid, satisfied, and extinguished) should be charged with debts, or be exchanged, sold, and disposed of, and the proceeds otherwise invested upon the trusts aforesaid; therefore, it is expressly declared that the said Thomas P. Devereux shall have ample and full power and authority from time to time, and at all times, at his own will and pleasure, by any proper deeds or assurances, to charge with the payment of any just debt or debts of the said Thomas, or to grant, sell, and exchange all or any part of the said lands and real estate, and to invest the proceeds of such sale or sales in other funds, real or personal, he, the said Thomas, holding any lands which he may acquire by exchange, and any funds, real or personal, in which he may make any such investment, upon the trusts, and with the power herein declared, touching the lands which he may so grant, sell, or exchange, and any and every such grant, sale, exchange, and disposition shall pass the title discharged of any use or trust hereby declared for any the family of the said Thomas.

In witness whereof the said John Devereux and Frances, his wife, and

the said Thomas P. Devereux have hereunto set their hands and seals the day and year first above written.

JOHN DEVEREUX. [SEAL.]
FRANCES DEVEREUX. [SEAL.]
T. B. DEVEREUX. [SEAL.]

Signed, sealed, and delivered (erasures and interlineations first made) in presence of—

GEORGE E. BADGER.

Probate of deed.

STATE OF NORTH CAROLINA, *ss:*

Be it remembered that this day, at the city of Raleigh, before me, William Gaston, and one of the judges of the supreme court, personally appeared John Devereux and Frances Devereux, his wife, the grantors in the foregoing deed of conveyance from them to Thomas P. Devereux, and acknowleged the due and legal execution thereof as their act and deed for the purposes therein declared. And the said Frances Devereux being thereupon privately examined by me, separate and apart from her said husband, touching her free consent in executing the said conveyance, she, on such examination, declared that she had executed the same freely and of her own will and accord, without any force, fear, threats, or other undue influence of her said husband, or any other person, and did still voluntarily assent thereto. And the said Thomas P. Devereux, also on the same day, and at the same place, before me, acknowledged the execution by him of the said deed of conveyance.

Let it be registered, July 3rd, 1839.

WILLIAM GASTON.

Certificate of registration of deed.

This deed was registered March 9th, 1848.

SAMUEL CALVERT, *P. R.*,
Jackson, Northampton County, North Carolina.

Exhibit B with amended bill.

Frances Devereux's will, dated the 23rd day of December, A. D. 1847.

In the name of God, amen. I, Frances Devereux, in the State of
46 North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine and executed by my late husband and myself. And I would here declare that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance fur' than as proofs of my faith. I cast them from me, and cling to the right-

eousness of my Saviour as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they might be saved from the temptations which accompany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

ITEM 1ST. I give and bequeath to the "Trustees of the Caldwell Institute" and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina, and having been incorporated by the legislature of North Carolina) the sum of four thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually, or semi-annually, as required, during that period; the interest alone of said sum to be applied to the payment of the salaries of the professors or instructors in said institute, whereever it may be located, provided it be within the said State of North Carolina.

ITEM 2ND. I give and bequeath to Clement C. Read, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of four thousand dollars, in trust, for the benefit of the "Union Theological Seminary," located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary whenever the sum shall be received by him, which sum shall be appropriated to the endowment of an additional professorship in said seminary. And until said endowment be completed, the interest annually arising from said sum shall be added to the principal, or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

ITEM 3RD. I give and bequeath to the trustees of the board of education of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be applied by said board to the education of indigent pious young men for the gospel ministry; but of the principal of this sum, only five hundred dollars shall be used in any one year.

ITEM 4TH. I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them the sum of four thousand dollars, in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the "Board of Foreign Missions of the Presbyterian Church in the United States of America," to be applied to the uses and purposes of said
47 board, and under its direction, and the receipt of said treasurer shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum only one thousand dollars shall be used in any one year.

ITEM 5TH. I give and bequeath to the trustees of the "Board of Missions of the General Assembly of the Presbyterian Church in the United States of America," and to their successors and assigns, the sum of four thousand dollars, to be held by the said trustees and their successors forever, to and for the uses and under the direction of the said board of mis-

sions of the said general assembly, according to the provisions of their charter, to be appropriated to domestic missions, and only one thousand dollars of the principal to be used in any one year for that purpose.

ITEM 6TH. I give and bequeath to my executors and the survivors of them the sum of five hundred dollars, in trust, for the benefit of the "Raleigh Female Benevolent Society," which sum shall be loaned out or vested in some productive stock, and the proceeds thereof alone applied annually or semi-annually in the payment of the salary of the teacher of the school under the care of said benevolent society, provided the said society shall raise a sum annually which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher, or if said society should cease to exist, then the proceeds of the above five hundred dollars shall be applied to the payment of a colporteur to supply religious publications in some destitute part of North Carolina.

ITEM 7TH. It is my will that all my negroes who, at the time of my death, shall be in possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period. At the expiration of that time my highly esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes; these he is to take at a valuation, giving bonds for the same, payable in ten annual instalments, but as I know he is at a great expense to promote the spiritual improvement of his slaves, I desire the expense attending their removal to be paid by my estate. Should John Devereux take any of said negroes, the same terms will be required as in the case of said Leonidas Polk.

ITEM 8TH. I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes:

First, to Miss Louisa Taylor, daughter of Mrs. Eliza Taylor, fifty dollars annually during her natural life.

Secondly, to Miss Ellen Anderson, who was brought up by my friend Mrs. Mary Jones, the sum of fifty dollars per annum during her natural life.

Thirdly, to Mrs. Elizabeth Kunis, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow, esq'r., of the said town of Newbern, for the benefit of said Elizabeth Kumis during her natural life.

Fourthly, to two girls at the mission school in Ceylon, who bear the names of Catharine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the "American Board of Commissioners for Foreign Missions," for their support at the said mission school.

Fifthly, to the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars
48 per annum, to be applied by him in the cause of female education in the West, or valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly, to Thomas P. Devereux, one hundred and forty dollars per annum, to aid in supporting a teacher (should he think fit to employ one) to give religious instructions to the slaves on the Roanoke River, particularly those in the possession of my descendants.

ITEM 9TH. It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors may deem best. If sold upon credit, a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH. From the funds arising from the sale of the above slaves and the house and lot in Chapel Hill, it is my will that at the death of Mrs. Eliza Taylor, her daughter Louisa shall receive the further sum of one hundred and fifty dollars annually during her natural life; or should the said Eliza Taylor, by and providential visitation be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum during her natural life, over and above the sum of fifty dollars per annum heretofore provided for her. The same to be paid the said Louisa Taylor by my executors annually.

ITEM 11TH. I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William J. Clarke, trustees of the Presbyterian church or society in the city of Raleigh, or to their successors in office, five negroes, viz.: Tom, Viney, Priscilla, and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct. But should said church or congregation, in process of time, fail to adhere to the doctine, order, and form of church government set forth in the confession of faith of the "Presbyterian Church in the United States of America," then in that case I direct that the said negroes and their increase shall return to my executors to be distributed according to law; and further it is my will that if the said church or congregation shall at any time fail to raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then and in that case the bequest of said negroes shall be void, and the said negroes and their increase shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

ITEM 12TH. I give and bequeath to S. S. Souter, of the borough of Norfolk, and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust nevertheless for the association known by the name of the "Seamen's Friend Society" of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest to be void.

ITEM 13TH. I give and bequeath to Elizabeth Lacy, daughter of the Reverend Drury Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years old, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH. In consideration of the faithful services of my
49 female servant Evelina, it is my will that at my death she shall be sold to such a person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said

Evelina to such person, upon his executing a bond, with good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties Nash, Wayne, and Johnston, and if the said persons elected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl Evelina is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 16TH. It is my wish that my servant girls Rebecca, Delia, and Sally shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale, but at private sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons; my object being that they shall have masters who will treat them properly, and not take them out of the State.

ITEM 16TH. Should my debts, at my decease, not exceed two thousand dollars, I give my carriage and horses to my beloved son, Thomas P. Devereux; if otherwise, it is my will and desire that my executor should sell all the stock of horses, cattle, hogs, &c., crops, and farming utensils, and any personal property I may have in the possession of my grandson, John Devereux (negroes excepted), also my carriage and wagons or any other property of the same description, and pay all my debts; and should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out, and the proceeds applied to the payment of the balance until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in some other manner, and take the negroes into their possession. Should it appear at my decease that the bequests exceeded the amount of funds left, my will is that the first five only shall be curtailed until brought within the limit of the assets. It is my further will and desire, and I do so direct and appoint, that if any one or more of the legacies hereinbefore given or intended to be given by me should fail to take effect through any informality, or from any other cause, that then the sum so failing shall be added to and from a part of the other legacies which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke my lawful executors, to execute this my last will and testament, according to the true intents of the same; and having full confidence in the integrity and fidelity of my executors, I desire they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all of which I, the said Frances Devereux, do hereunto set my hand and seal this (23rd) twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-seven, praying that Almighty God in his good providence and great mercy would so overrule and direct and care for the several bequests herein made that thereby his own glory and the good of His church may be promoted.

FRANCIS DEVEREUX. [SEAL.]

50 Signed, sealed, published, and declared by the said Frances Devereux to be her last will and testament, in the presence of us, and in presence of each other, do, at her request, subscribe our names as witnesses thereto.

D. Du Pre.
George Simpson.

Exhibit C with amended bill.

Frances Devereux's will, dated the 20th day of August, A. D. 1848.

In the name of God, amen. I, Frances Devereux, in the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and exacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself. And I would hereby declare that my only hope of a glorious resurrection is in the atonement made for sin by my Savior Jesus Christ, and acknowledging my best works are utterly unworthy of acceptance farther than as proofs of my faith, I cast them from me and cling to the righteousness of my Savior as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they may be saved from the temptations which accompany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

Item 1st. I give and bequeath to the trustees of the Caldwell Institute, and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina), the sum of two thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually, or semi-annually, as required, during that period, the interest alone of that sum to be applied to the payment of the salaries of the professors or instructors of said institute, wherever it may be located, provided it be within the State of North Carolina.

Item 2nd. I give and bequeath to Clement C. Read, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of two thousand dollars, in trust for the benefit of the "Union Theological Seminary," located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary, whenever the sum shall be received by him, which sum shall be appropriated to the endowment of an additional professorship in said seminary, and until said endowment be completed, the interest annually arising from said sum shall be added to the principal, or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

ITEM 3RD. I give and bequeath to the trustees of the board of ed
tion of the Presbyterian Church of the United States of Amer
51 and to their successors and assigns, the sum of two thousand
lars, to be applied by said board to the education of indigent p
young men for the gospel ministry; but of the principal of the sum
hundred dollars only shall be used in any one year.

ITEM 4TH. I give and bequeath to my executors, and the survivors
them, and the executors, administrators, and assigns of the survivors
them, the sum of two thousand dollars, in trust, to pay over the same
the person who, when the same shall be payable, shall act as treasure
the Board of Foreign Missions of the Presbyterian Church in the Un
States of America, to be applied to the uses and purposes of said bo
and under its direction, and the receipt of said treasurer shall be a
receipt and acquittance of my said executors for the same; but of
principal of this sum only five hundred dollars shall be so used in
one year.

ITEM 5TH. I give and bequeath to the trustees of the Board of M
sions of the General Assembly of the Presbyterian Church in the Uni
States of America, and to their successors and assigns, the sum of
thousand dollars, to be held by said trustees and their successors forev
to and for the uses and under the direction of said board of missi
of the said general assembly, according to the provisions of th
charter, to be appropriated to the domestic missions, and only
hundred dolllars of the principal to be used in any one year for t
purpose.

ITEM 6TH. I give and bequeath to my executors, and the survivors
them, the sum of five hundred dollars, in trust, for the benefit of
"Raleigh Female Benevolent Society," which sum shall be loaned
or vested in some productive stock, and the proceeds thereof alone
plied annually or semi-annually in the payment of the salary of
teacher of the school under the care of said benevolent society, provi
the said society shall raise a sum annually which, added to the proce
of the above five hundred dollars, shall be sufficient to support
teacher, or if said society should cease to exist, then the proceeds
said five hundred dollars shall be applied to the payment of a colp
teur to supply religious publications in some destitute part of North Ca
lina.

ITEM 7TH. It is my will that all my negroes who at the time of
death shall be in the possession of my grandson, John Devereux, in B
tie County, shall be kept together after my death until they have secu
the crop on the ground at that period. At the expiration of that ti
my highly esteemed son-in-law, Right Reverend Leonidas Polk, is
select as many families of said negroes as he wishes; these he is
take at a fair valuation, giving bonds for the same, payable in
annual instalments; the remainder of these negroes to be offered to
grandson, John Devereux, on the same terms before mentioned in
case of Reverend Leonidas Polk, to whom my executors shall pay
sum of five hundred dollars for the removal of his lot of negroes.

ITEM 8TH. I give and bequeath to my beloved son, Thomas P. Deve
eux, and to his executors, heirs, and assigns, the sum of seven thousa
five hundred dollars, in trust for the following purpose:

First, to Miss Eliza Taylor, daughter of Mrs. Eliza Taylor, fifty dollars annually during her natural life.

Secondly, to Miss Ellen Anderson, who was brought up by my friend Mrs. Mary Jones, the sum of fifty dollars annually during her natural life.

Thirdly, to Mrs. Elizabeth Kunis, now residing in the town of Newbern, in the State of North Carolina and annuity of fifty dollars, to be paid annually to Thomas Sparrow, esq'r., of said town of Newbern, for the benefit of said Elizabeth Kunis during her natural life.

Fourthly, to two girls at the mission school in Ceylon, who bear the names of Catharine Anne Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the American Board of Commissioners for Foreign Missions for their support at said mission school.

Fifthly, to the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars per annum, to be applied by him in the cause of female education in the West, or Valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part part of our country.

Sixthly, to Thomas P. Devereux one hundred and forty dollars per annum, to aid in supporting a teacher (should he think fit to employ one) to give religious instructions to the slaves on the Roanoke River, particularly those in the possession of my descendants.

Should all or any of said annuities or charities lapse in consequence of the death of the person or persons to whom they should be paid, should the said Society for Promoting Collegiate and Theological Education at the West fail, in process of time, to carry out its specified object, and should the said Thomas P. Devereux not employ a teacher, as above stated, then it is my will that my executors, and the survivors of them, pay over such sum or sums to the individual whom the Presbytery of Orange shall appoint to receive the same, which amount shall be employed by said Presbytery of Orange for the extension of the Redeemer's kingdom in any way which that body shall deem best.

ITEM 9TH. It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors deem best; if sold upon credit, a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH. From the funds arising from the sale of the negroes above mentioned, the house and lot in Chapel Hill, it is my will that at the death of Mrs. Eliza Taylor, her daughter Louisa shall receive the further sum of one hundred and fifty dollars annually during her natural life; or, should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the abovementioned sum of one hundred and fifty dollars per annum during her natural life over and above the sum of fifty dollars per annum heretofore provided for her, the same to be paid to the said Louisa Taylor by my executors annually.

ITEM 11TH. I give and bequeath to Jesse Brown, George Simpson, Sey-

mour W. Whiting, and William J. Clark, trustees of the Presbyterian church or society in the city of Raleigh, or to their successors in office, five negroes, viz, Tom, Viney, Prescilla, and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct; but should said church or congregation, in process of time, fail to adhere to the doctrine, order, or form of church government set forth in the confession of faith of the Presbyterian Church in the United States of America, then, in that case, I direct that the said negroes and their increase shall return to my executors to be distributed according to law; and, further, it is my will that if the said church or congregation shall at any time fail to raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then, and in that case, the bequest of said negroes shall be void, and they, the said negroes, with their increase, shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

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ITEM 12TH. I give and bequeath to S. S. Souter, of the borough of Norfolk and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust nevertheless, for the association known as the Seaman's Friend Society of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest is to be void.

ITEM 13TH. I give and bequeath to Elizabeth Lacy, daughter of Reverend Drury Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years of age, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH. In consideration of the faithful services of my female servant Evelyna, it is my will that at my death she shall be sold to such person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said Evelyna to such person, upon his executing a bond, with good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties of Nash, Wayne, and Johnston; and if the said person selected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl Evelyna is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 15TH. It is my wish that my servant girls, Rebecca and Delia, shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons, my object being to keep them near their relatives.

ITEM 16TH. It is my will and desire that my executors should sell all the stock of horses, cattle, and hogs, &c., crops and farming utensils, and any personal property I may have in the possession of my grandson, John

Devereux (negroes excepted). Also my carriage and wagon, or any other property of the same description, and pay all my debts. And should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out and the proceeds applied to the payment of the balance, until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in some other way, and take the negroes into their possession. Should it appear at my decease that the bequests exceed the amount of funds left, my will is that the first five only shall be curtailed, until brought within the limits of the assets. It is my further will and
desire, and I do so direct and appoint that if any one or more of
54 the legacies hereinbefore given, or intended to be given by me,
should fail to take effect through any informality, or from any other cause, that then the sum so failing shall be added to and form a part of the other legacies, which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and Wm. D. Cooke my lawful executors to execute my last will and testament according to the true intents of the same; and, having full confidence in the integrity and fidelity of my executors, I desire they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all which, I, the said Frances Devereux, do hereunto set my hand and seal this twentieth day of August, A. D. 1848.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. J. CLARKE.
CATHARINE E. FULLER.

Codicil.

Since the execution of my last will and testament, I have concluded to make certain alterations and amendments thereto as contained in the following codicil, which I do hereby constitute a part of my said will, to take effect and be construed as such.

ITEM 1ST. Should my son-in-law, Reverend Leonidas Polk, take families of my negroes, according to item 7th of my last will and testament, then it is my desire furthermore, that out of the interest due annually on his bonds given for said negroes, he retain one hundred and fifty dollars per annum, to be expended for the religious instructions of the negroes, after their removal from this State. And furthermore, if the settlement of my estate will allow of further indulgence, then it is my wish that the said Reverend L. Polk be not pressed to pay the installments, but be allowed to pay them in his own time, or at such periods as will best suit his convenience.

ITEM 2ND. Having learned that Dr. Simmons J. Baker does not intend to remove from this State, I hereby name and appoint him, together with my respected son-in-law, the Reverend Leonidas Polk, as executors to my last will and testament, in addition to those gentlemen heretofore named and appointed.

ITEM 3RD. The religious instruction of the slaves on the Roanoke River being a matter which I greatly desire to promote, I hereby earnestly request my executors to secure the services of an efficient, competent clergymen, who will be willing to itinerate up and down the river, and preach at the different plantations; and I hereby authorize them to pay said clergyman a liberal allowance for his services during eight months of the year. It is furthermore my wish that he be supplied annually with the publications of the American Tract Society, for gratuitous distribution among the families of that region of country.

ITEM 4TH. I give and bequeath to the American Tract Society, instituted in the city of New York, one thousand dollars, to be applied to the charitable purposes of said society.

ITEM 5TH. Some time ago I made an arrangement by which I hoped to secure the payment of two hundred dollars a year to Mrs. Elizabeth Chester, of Weathersfield, Connecticut, for four years, the first payment to be made December the 20th, A. D. 1848. Should any unfore-
55 seen circumstance prevent the remittance of said sum of two hundred dollars per annum for four years, it is my desire that my executors make that amount good to Mrs. Chester for that time; after which she is to receive from them one hundred and fifty dollars per annum during her life.

ITEM 6TH. To my esteemed pastor, the Reverend Drury Lacy, I give and bequeath the sum of fifty dollars for the purpose of making additions to his library, which is independent of the pastor's library. And whereas in the body of my will I have given to his daughter Betsey a girl named Sarah, and I now see fit to dispose of said girl Sarah otherwise, I give and bequeath to said Betsey, in her place, George, son of my servant Prescilla.

ITEM 7TH. In the body of my will I have given to the school under the care of the Female Benevolent Society the sum of five hundred dollars, in addition to which I hereby bequeath to it my servant girl Sarah, who is to be left entirely at the disposal of Mrs. Colburn until she is twelve years old; after which she is to be hired, and the profits of her labor given to the school, provided the annual subscription from the ladies of the town amounts to the sum of one hundred dollars; in case it does not, then it is my will that said Sarah, and the interest of the five hundred dollars, be employed in educating some girl as a teacher, who is to be chosen by those ladies who were last officers of the Female Benevolent Society.

ITEM 8TH. I give and bequeath to Mr. Henry Hardie, son of Mrs. Marion Hardie, of this city, the sum of three hundred dollars, to aid him in getting a theological education at Princeton, New Jersey, which sum is to be placed in the hands of Mr. John Primrose, to be paid to the said Henry Hardie as his necessities may require. Should this donation lapse in consequence of the death of said Henry Hardie, then it is my will that the above amount be applied to certain Sabbath schools in destitute places, or to aid in supporting colporteurs.

ITEM 9TH. Having learned that my daughter-in-law, Mrs. S. E. Devereux, declines taking my servant Eveline, who wishes to be sent to her, it is my wish that said Eveline be placed under the care of some lady going to Philadelphia; she is then to be left free to remain in said city; or if she wishes to return it is my wish that my executors shall pay her expenses back to this place, where she shall be sold under the following provisions,

to wit, having chosen an owner, she shall be valued by competent persons, and then sold for one hundred less than such valuation, the purchaser giving bond for the payment of one hundred dollars annually until the whole price is paid, which sum I wish expended each year in the manner designated in item 14th of my last will and testament.

ITEM 10TH. Should Judge Nash accede to my proposal, it is my wish that his drafts be honored, without security, to the amount of five hundred dollars, no interest being required of him for four years.

ITEM 11TH. As my grandchildren attain the age of fourteen years I desire that each of them may be furnished by my executors with a copy of the Holy Scriptures, with Scott's or Henry's commentary; also Dwight's life of my grandfather, J. Edwards, Wilberforce's Practical View of Religion, Newton's works, Mason on Self-knowledge, the Great Change of Redford, and Mason's Spiritual Treasury. I wish these works to be of the largest sizes and best editions—London copies if they can be procured.

ITEM 12TH. With respect to the girls at the mission school in
56 Ceylon, the annuities cannot lapse, for a successor is selected, who takes the name and privileges of the girl removed.

ITEM 13TH. I give and bequeath to my ever dutiful son, Thomas P. Devereux, my brother's portrait and the miniature likeness of his father.

ITEM 14TH. To my beloved daughter, Frances A. Polk, I give the miniature of my mother, the portrait of Mrs. Polk in crayon, the large Bible in two volumes, once belonging to my mother; a small silver tea-pot, made for my father; a spoon and fork commonly used by my brother, the small open spoon with a pointed handle, four *pitchers* of a fox chase, a chest of drawers, an old-fashioned, heavy, round mahogany table at the plantation, and a pair of old lamps, also at the plantation.

ITEM 15TH. To Mrs. Sarah E. Devereux I give the chandeliers which were brought from France by my brother.

ITEM 16TH. To Hamilton Polk I give the portrait of his father.

ITEM 17TH. To Frances Polk I give the portrait of her mother.

ITEM 18TH. To Frances J. Miller I give a silver tea-pot, cream-pot, sugar-bowl, and tongs; six dessert spoons, and six tea-spoons, in trust for her daughter, Catharine, should said daughter survive her mother.

ITEM 19TH. To Catharine Edmonston the Brussels carpet, if she thinks it worth calling for.

ITEM 20TH. Should William G. Clarke go to housekeeping in this State, my granddaughter Mary B. Clarke is at liberty to take any articles of household or kitchen furniture as she may wish, except such as I have otherwise disposed of. Should William G. Clarke not become a resident of this State, my will is that William D. Cooke, of this place, shall have the liberty which was given to Mary B. Clark, and also that the few articles loaned him by me be considered as his property.

ITEM 21ST. I give to my granddaughter Honoria Cannon the table-spoons marked "N. D.," two ladles marked "A. B. P.," the salt-cellars, and all my household linen, except such as I otherwise disposed of, and a set of dimity curtains in the room which I now occupy.

ITEM 22ND. To Mary B. Clarke I give my plated-ware, all my glass-ware, and the best Marseilles quilt.

ITEM 23RD. To Mrs. Eliza Primrose I leave the chair covered by herself, together with the tidy presented to me by Miss Parmlee.

ITEM 24TH. From my apparel I wish my granddaughter Frances J. Miller and Mrs. Primrose to select such articles as they may deem proper to send to Mrs McPheeter's my common dresses to be sent to E. Kunis, of Newbern, my cloak, bombazine dress, and two summer dresses to Mrs. Goodwin, as tokens of affectionate remembrance.

ITEM 25TH. Nor would I close without acknowledging my obligations to Wm. D. Cooke, who, during the frequent absence of my son, as far as possible, supplied his place. As a small proof of my esteem, I therefore give and bequeath to him the sum of one hundred dollars, in addition to the articles in item 20th of this codicil which Mary B. Clarke may not take.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and published the 16th day of April, 1849, in presence of—

MARY B. CLARKE.
WM. J. CLARKE.

57 *Time allowed def'd't, T. P. Devereux, to answer till Nov. term, A. D.* 1859.

And thereupon the def'd't, T. P. Devereux, now and here in open court, admits due and personal service of a copy of the amended bill of the plaintiffs, and craves time to answer the same, until the 1st day of the November term, A. D. 1859, of this court—and time to answer is granted him accordingly; and the same day is given to the plaintiffs.

Proceedings at Nov'r term, A. D. 1859.

On which day, to wit, at a term of the circuit court of the United States, begun and held for the district of North Carolina, at the court-room in the city of Raleigh, on the last Monday in November, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-third year, being the 28th day of said month, before the honorable Asa Briggs, district judge presiding, sitting in equity, come the parties aforesaid by their attorneys aforesaid.

Filing of answer by T. P. Devereux.

And the defendant, Thomas P. Devereux, files his answer herein with the exhibits accompanying of the same in the words and figures following, to wit:

Answer of T. P. Devereux.

The separate answer of Thomas P. Devereux to the bill of complaint of Frank Q. Unsted and Elizabeth, his wife, and of Georgina P. Devereux, filed in this honorable court against the said Thomas P. Devereux, Right Reverend Lonidas Polk, and Frances Ann, his wife.

This defendant, for answer to the said bill, saith, that the genealogies of the several parties and their respective residences are correctly stated therein, and also the intermarriage of the plaintiffs, Frank and Elizabeth;

this defendant also admits that the father and mother of this defendant departed this life as in the said bill is stated, and this defendant has no reason to doubt that the times of their respective deaths are correctly stated. This defendant also admits that the said John and Frances Devereux, at the date set forth in the said bill, duly sealed and delivered the deed mentioned in the said bill, a copy of which, marked A, is filed with the same as an exhibit thereto; and this defendant supposes the same to be correctly copied into the said exhibit, but, if necessary, this defendant prays for greater certainty to refer to the original thereof in the possession of this defendant, which this defendant will produce if necessary, in the progress of this cause. But this defendant saith that contemporaneously with the sealing and delivery of the deed, a copy of which is attached to the plaintiff's bill as an exhibit and marked A, the said John Devereux sealed and delivered to this defendant another deed, also dated the 3rd day of July, 1839, which last-mentioned deed is referred to in the said Exhibit A, and refers in its body to the said exhibit, and this defendant insists is to be taken in connection with the said deed exhibited by the plaintiffs, as a necessary part thereof, and as evidencing together one single transaction of the said John and Frances. This defendant hath the original of the said deed in his possession, he hath filed a
58 copy thereof as an exhibit, attached to his answer, marked "Z," and submits to produce the original when thereunto required. This defendant saith that under the said deed, he became liable to pay each of the female plaintiffs the sum of twenty-two thousand dollars, and the further sum of six thousand dollars, in extinguishment of a debt of their father's, which was a charge upon his estate then in the hands of their mother, amounting in all to the sum of fifty thousand dollars, with interest as provided. This defendant saith the said sum hath been fully paid and satisfied by him, and he hath in his possession the releases of the female plaintiffs for the sum of twenty-two thousand dollars each, and is fully prepared to prove the payment of the sum of six thousand dollars in satisfaction of the said debt.

Further answering, this defendant saith that, at the sealing and delivery of the said deeds, the said Frances announced that the reservation of fifty thousand dollars in her favor, in the plaintiff's Exhibit A, was intended for religious and charitable purposes; that the said John Devereux objected to the amount as unreasonably large and oppressive upon their family, and for that cause refused to permit the settlement then proposed to be perfected. This defendant saith that the resolution of the said John was only altered by an engagement of the said Frances to consider the said sum of $50,000 as a charge, not only for all religious and charitable objects, but as an ample provision for her comfortable and adequate support, independent of any addition thereto from the proper estate of the said John. And this defendant saith that, upon the promise of the said Frances to the said John, in nowise to interfere with the arrangements of his will, the consent of the said John to the said settlement was given, and the same was completed.

This defendant, further answering, saith that the said John and Frances were an affectionate couple, who had lived more than half a century together. There was to this defendant's knowledge no serious difference of opinion between them, excepting the subject of religious charities. That

afterwards the said John handed this defendant his last will and testament, and requested this defendant to read it; that upon this defendant's observing that the provision for his wife, this defendant's mother, was small, the said John referred at once to the promise of the said Frances touching the $50,000, and stated he would cheerfully give her his whole estate, were it not for her morbid feelings upon the subject of religious charities; and this defendant hath in his possession a will of the said John, made before the said 3rd day of July, 1839, but revoked by a subsequent will, which was duly proved, in which a competent provision is made for the said Frances, according to the property of the said John at its date. This defendant prays to state these facts, as they influenced this defendant in his subsequent conduct in respect to the subject-matter of the plaintiff's bill. This defendant saith that he submits upon the proper construction of the two deeds A and Z, that it is somewhat doubtful whether the yearly reservation of $3,000 was not intended to be a stipulation for the annual payment of the interest upon the sum of $50,000 by this defendant to the said Frances; but, however this may be, this defendant saith that the said Frances so intended it; and, if otherwise expressed, it was a mistake in the draft of said deed. For he saith that, after the death of the said John, her husband, viz, in the year 1845, the said Frances sent for a most respectable counsellor at law, and directed a deed to be drawn correcting the said mistake, a copy of which deed, marked "X," this defendant hath filed with this
59 answer, and prays to be taken as a part thereof, the original of which is in the possession of this defendant and will be produced when required by this honorable court. And this defendant saith that he believes the existence of the said deed of correction was well known to the plaintiff Frank before the filing of said bill of complaint.

This defendant saith that he has not in his possession, at the time of drafting this answer, copies of the papers filed as exhibits to the bill of complaint, marked B and C, but this defendant supposes them to be correct copies of the will of the said Frances Devereux, and of an attempted alteration of that will, and of a codicil to that attempted alteration. This defendant, therefore, admits the same, subject to his rights to correct any mistake by the production of certified copies thereof. This defendant admits that, between the dates of the two said papers, the said Frances had, in consequence of her infirmity of disposition in respect to religious and charitable objects, by successive charges of sums of money, in a great degree exhausted the power given her by the said settlement of charging the property of this defendant. As to the reason for rejecting one of the said papers and admitting the other to probate as the will of the said Frances, this defendant saith that this whole matter is beyond the jurisdiction of this honorable court, and was and is within the exclusive cognizance of the court of probate, where, and where only, any error, if error there be, in admitting the one or rejecting the other, can be alleged, heard, and corrected, whilst in this, and in all other courts except the said court of probate, the sentence pronounced is final and conclusive; that the paper admitted was and is the will, and the paper rejected is not and never was a testamentary disposition of the said Frances. Of anything beyond what was so decided in the said probate court this defendant insists that this honorable court can take no judicial cognizance. Nevertheless, as the statements in respect

thereto contained in the plaintiff's bill are very incorrect, in order to correct the same this defendant denies that either of the said papers was rendered inoperative by reason of any interest of the attesting witnesses thereto, for this defendant saith that neither of the attesting witnesses to said instruments had any interest whatever in either of those papers. True it is that the attesting witnesses to the codicil to Exhibit C had such interest; but he avers that the paper marked "Exhibit C" was rejected on the final trial of the issue mentioned in the said bill and hereinafter admitted, because the witnesses thereto testified that at the execution thereof the testatrix had not a sound and disposing mind and memory, and the codicil thereto of course could not be proved, the witnesses being interested, and those to the paper marked "Exhibit B" swore that at the execution thereof the said Frances was in her usual mental state, and competent to make a valid disposition of her property. And this defendant avers that these facts, in respect to the probate of one and the rejection of the other testamentary paper, had been fully communicated to the plaintiff Frank before the drafting the said bill of complaint.

This defendant admits that the said Frances dissented from the will of her husband, the said John, and, upon such dissent, became entitled to one-fourth of his nett personal estate; that there was no legal bar to her right to claim this fourth, and that the same was laid off to her out of the legacies given by the will to Mrs. Polk, and this defendant, and his son, John Devereux, junior, without reference to the advance made to the said George Devereux, the father of the plaintiffs, Elizabeth and Georgiana. This defendant hath filed with this answer a copy of the
60 proceedings of the county court of Wake in regard to the said dissent of the said Frances, and hath marked it "Y," and also a copy of the will of the said John, which he prays may be taken as a part thereof.

In justice to the memory of the said John, this defendant prays to add that, by a prior will dated before the said 3rd day of July, 1839, the said John had given to the female plaintiffs and their mother a large sum of money, fully equal, in connection with advancements to their father, to what he thought a just share of his estate. The said John, after the settlement of July 3rd, 1839, always stated his belief that the provisions of his will, with the prior advancements, and the sum secured to the female plaintiffs, amounting to some $83,000, clear of debt, was, under the circumstances, more than their fair proportion of his whole estate, and frequently expressed his determination to alter his said will. And learning that the mother of the female plaintiffs had, by importunity, procured from the said Frances, his wife, an assignment of $5,000, part of the sum which she had a right, under the deed of settlement, to charge upon this defendant, he became greatly incensed, and at once revoked that will, and made the one copied into Exhibit Y.

This defendant entirely agreed with his father, the said John, in opinion as to the morbid notions of his mother, the said Frances, in respect to charities of different kinds. There was such an entire difference of opinion upon this subject, and this subject only, that conversation on it was disagreeable. This defendant felt it his duty to call to his mother's notice the fact that her indiscriminate profusion to all supposed charitable objects brought to her notice was fast exhausting the amount which she

had power to charge upon this defendant to a sum the interest of which would hardly suffice for her comfortable support. This defendant has reason to believe that originally she intended to give $8,000 to each of the religious corporations or societies mentioned in the Exhibit B; that subsequently she felt compelled to reduce that sum, as is set forth in Exhibit B, and the conversation above mentioned, this defendant believes, produced the attempt at a further reduction, as set forth in Exhibit C, which had been drafted some months before its execution.

This defendant saith that it is manifest upon the exhibits attached to the bill that a clear and absolute intestacy of the said Frances would be the most beneficial result, in a pecuniary point of view, to this defendant. But this defendant does not believe that he ever stated to the mother of the plaintiffs, Elizabeth and Georgina, that he would contest the said will. On the contrary, this defendant does not recollect ever entertaining such an intention. He well recollects stating to the said mother that, as the elder surviving member of the family, he in no way should disapprove of her doing so on the part of her children, the plaintiffs. The said mother of the plaintiffs replied, as well as this defendant recollects, that she would be governed by the course of the defendants, the Right Reverend Leonidas Polk and Frances, his wife.

This defendant saith it is false and injurious, both to this defendant and to the reputation of the late honorable William H. Haywood, to aver, as the plaintiffs in their bill do, that there was any combination or conspiracy between this defendant and the said Haywood to effect any result in respect to the probate of the will of the said Frances, or in respect to anything connected with the interests of the plaintiffs. For this defendant saith that for several years before the offering the said will for probate, and this defendant believes up to that time, and for some time after, there has been a coolness between this defendant and the said Haywood, amounting to an entire alienation.

61 But this defendant finding that the defendant Leonidas, on behalf of his wife, the defendant Frances Ann, had filed a caveat to the probate of the said will, and was represented by able counsel, and knowing the intention of the said mother of the female plaintiffs to be governed by his conduct, according to his recollection, wrote to her requesting her not to be governed by this defendant's coolness towards Mr. Haywood, but to employ him to attend to the interests of her children; and this defendant expressed the belief that the duties he might assume would be ably and faithfully performed. In reply to this letter, the said mother expressed her gratification at this defendant's waiving all personal objection to Mr. Haywood, stated how much she had been gratified by association with that gentleman and his family during a then recent winter spent in Washington, and requested this defendant to retain him for her daughter; which this defendant did. This was the whole of this defendant's connexion with that controversy on that side. He employed Mr. Haywood to represent the interests of the female plaintiffs, and did not employ him to represent this defendant, in that controversy. This defendant took no part in it, had no interest in it, which he intended should be represented, and had declined, and continued to decline, to interfere with its progress, except as hereinafter stated. This defendant saith that the appointment of Mr. Haywood as guardian ad litem, so much complained of by the plaintiffs, was in the

ordinary course of practice in cases where infants are parties, is practically a mere formality; and this defendant then knew, and now knows, no person upon whom the appointment could more properly have devolved. This defendant saith that he knows nothing of Mr. Haywood declining an interview with the mother of the female plaintiffs; but if he did so, this defendant cannot be expected to assign the reasons for his conduct.

This defendant denies that he stood in any fiduciary relation to the mother of the female plaintiffs. As the widow of a brother, who was dear to this defendant, he did everything for her in his power, but this defendant saith he verily believes the said mother confided in no one. She sold a large property of her late husband, situate in North Carolina, but did it entirely without consulting this defendant, who knew nothing of the sale until after it was made, and to this day knows nothing of the collection and subsequent investment of the purchase-money. Under the settlement, as made by Exhibits A and Z, it became the duty of the defendant to pay her certain monies on certain days. This defendant was in no wise indulged as to the payment or consulted as to their investment, but either remitted, by her direction, the several amounts at the days of payment, or paid them to her agents in North Carolina. And this defendant hath no recollection of any application by the said mother to this defendant for advice subsequent to the execution of the said settlement, excepting a request to aid her in selecting counsel for her children in defending the suit as to the will of the said Frances Devereux.

This defendant saith that in the conduct of the said issue he maintained an entire neutrality. This defendant clearly stated to all the parties to the controversy that he should insist upon a fair trial of the issues, and should be satisfied with the result, and that he would not suffer the will to be undefended. And this defendant believes that, in execution of this resolution, when William D. Cooke, as mentioned in the bill, declined all connection with the controversy, this defendant procured the services of Seymour W. Whiting, also mentioned in the bill, to protect the interests of the legatees. This defendant saith he hath not at hand while drafting this answer a copy of the
62 proceedings in the said issue. He believes he hath stated the steps as they were taken, but in this he submits to be corrected by the record of the said cause, which this defendant will file as an exhibit. But this defendant saith that whatever the said record may show as to this defendant's in any way taking a part in the said suit as an executor, or as desirous to prove the said will, must be a mistake; for by no act of his did this defendant ever evince any intent to prove the said will as an executor. Such an act was entirely contrary to the taste, the interest, and the preconceived plans of this defendant. This defendant saith that since the original draft of this answer was made he hath examined the files of the court in which the said issue was finally tried, and hath found among them an unsigned paper, in the handwriting of some person to this defendant yet unknown, a copy of which, marked "M," this defendant hath herewith filed. At the time he had no counsel in the cause, and he gave no consent personally to the preparation of this paper, and had no knowledge of its existence until since the first draft of this answer was made; yet he is confident that he must have been present during that

term of the court, for he recollects stating that he thought it was not just or fair to the said William D. Cooke that he should, in consequence of his intervention, be charged with the payment of any costs. This defendant believes that at or about the time when the said exhibit appears to have been drawn, arrangement was made that Seymour W. Whiting, who had before that time been appointed administrator pendente lite, should carry on the said suit, and, if the will was proved, should be appointed administrator with the will annexed; for this appointment was made at the succeeding November term of the county court of Wake, where the suit was returned by writ of procedendo. Or it may be that, upon the expression of this defendant's conviction that the said William D. Cooke should not be charged with costs in respect to the said suit, it may have been agreed that the suit, for the purposes of the trial then instant, should progress in his name, and the said Whiting to be appointed administrator with the will annexed, as was subsequently done. At any rate, this defendant submits that the said paper never was acted upon. The suit progressed in the name of the said W. D. Cooke; and so this defendant most positively avers that by no act of his did he ever in any way become a party to the said suit, excepting as it was necessary to cite him as one of the next of kin to all proceedings. This defendant admits that upon the probate of the will, set forth in Exhibit B to the said bill, the said Whiting, in November, 1852, was duly qualified as administrator with the will annexed; and this defendant also admits that the said Whiting, in taking this step, acted upon the request of this defendant; and that this defendant, with a gentleman of great respectability, became sureties to his administration bond. But he saith that it is wholly untrue that said Whiting acted as the tool or agent of this defendant; for he saith that the said Whiting, now deceased, was a man of high integrity and great respectability; that this defendant was moved by these characteristics of the said Whiting in procuring his appointment of administrator with the will annexed. It is not true that this defendant took possession of the slaves, or other property belonging to the decedent, or treated them or it as if this defendant was the personal representative. On the contrary, this defendant saith that the said Whiting hired out the said negroes whenever they were hired out, received the amount of said hire, paid the debts of the decedent, and, as this defendant believes, settled the only important account of the decedent, to wit, one with
63 this defendant's son, without the intervention of this defendant.

This defendant saith that he recollect no acts of his intermeddling with the said assets, unless it it be in respect to the slave Evelina, hereinafter more particularly set forth. This defendant saith that he requested the said Whiting not to sell any of the slaves of the said decedent without consultation with this defendant, to which the said Whiting acceded; but at the same time this defendant placed at the disposal of the said Whiting, of the proper funds of this defendant, a sum equal to the discharge of all the debts of the said decedent. This defendant saith that he hath in his possession a statement of the said Whiting, furnished by him to this defendant, of the nett hire of the said negroes, and of the sales of two of them, a copy of which, marked "W," this defendant hath filed, and will produce the original when required. This defendant further saith that the said Whiting left a more extended, but still imperfect, ac-

count of his administration, a copy of which, marked "K," this defendant hath obtained, and hath filed for the inspection of the plaintiff; but this defendant protests that this is a matter of discovery which in no way concerns this defendant, and which he only makes from a wish to deal plainly. Upon inspection of this account, it will be seen that the said Whiting charged himself with the residue of the said sum of $50,000, which the said Frances had power to charge upon the estate of this defendant; but this defendant saith that the said Whiting, as he had no power, so this defendant believes had no intention to raise the said sum, for this defendant saith that upon the death of the said Frances all power over the same ceased. In execution of this general plan this defendant was willing to raise all sums necessary to pay the debts of the said testatrix. He, as stated in this answer, placed at the disposal of the said Whiting funds equal to this object; and whenever there was a surplus in the hands of the said Whiting it was returned to this defendant, as appears by Exhibit W and otherwise.

Further answering, this defendant saith that, acting on the great desire he hath hereinbefore expressed of carrying into execution, as far as practicable, the matured and well-settled intentions of his mother (Exhibit C), and the disposition of the property, made by the deeds A and Z, and the will of this defendant's father, he determined, in the event of a total intestacy, as the power to charge in his hands would in that event clearly cease in this defendant's favor, to use the same as far as possible to effect the said objects and to indemnify himself and his sister, the defendant Frances Ann, against the loss caused by what this defendant believed to be the ill-advised and unfortunate dissent of the testatrix from the will of her husband; and in case the will (plaintiff's Exhibit B) was set aside, and that copied in Exhibit C was established, to do the same thing as far as possible under the altered circumstances. Under these impressions, and with this determination, this defendant, as he did not in fact, so he could have had no motive to conspire with Mr. Haywood for the suppression of the attempted will of the said Frances (Exhibit C) most falsely charged upon him by the plaintiffs, but would have preferred its probate instead of Exhibit B. Accordingly, and whilst the said controversy was pending, he authorized Mr. Haywood to propose, on his behalf, to the several charitable bodies taking legacies under these papers, to pay to each of them, at once and without reference to the final issue of the controversy in the probate court, the amounts bequeathed to them respectively, as mentioned in Exhibit C, upon receiving from them releases and full assignments of all their claims upon the estate of the said Frances.

64 But the purpos' and object of this defendant in authorizing this proposition, as hereinbefore set forth, were not communicated to Mr. Haywood. These proposals were in the first instance rejected. Subsequently (and the time will appear from the dates of the assignments next hereinafter exhibited) this overture was renewed, and Mr. Haywood procured from the Caldwell Institute an assignment of their interest for the full amount of the legacy to it, to be paid by this defendant. This defendant was not satisfied with either the result of the said negotiation or with the mode of its execution. This defendant had the form of the assignment altered to the form set forth in Exhibit V, which is a copy of the assignment finally accepted by this defendant, and the original of which this de-

fendant will produce when required. This defendant saith, believing that the will, Exhibit C, was determined upon by the said Frances when she was in full possession of her understanding, in consequence of a very free conversation with this defendant as to the large inroads upon her right to charge, and that she had then determined to reduce the legacies to religious charities one-half, but had failed to effect her settled and well-formed determination by unfortunately postponing the completion of it to a period when, in the opinion of the attesting witnesses, she was incompetent, he felt no scruples in endeavoring to reduce these legacies according to the matured and expressed wishes of the said Frances. This defendant saith that, thereafter acting for himself, and because of his conviction of his mother's wishes, he, as his convenience and ability permitted, proceeded to settle with the remaining four charities; but because of his peculiar legal position (which will appear by the 16th clause of the established will), he was more successful with them and procured assignments from them for the sum of two thousand dollars respectively paid them; copies of which assignments, marked "U," "T," "S," and "R," are filed as exhibits; and this defendant saith that the dates at which the negotiations for all the said assignments were brought to a conclusion he believes to be correctly stated in said copies. The suit finally resulted in the establishment of the first will (plaintiffs' Exhibit B), for the causes above herein set forth.

Further answering, this defendant saith that his purchases of the legacies, hereinbefore mentioned, were made solely for the benefit of himself, and he denies that when he made the same he was the executor of the said Frances, or in any way responsible as if he had been. But if in this he should be in error, and should by this court be held to have been, at the time of purchasing the same, the executor of the said Frances, or responsible as such, this defendant denies that *their* is any rule or principal of this court which converts him into a trustee of said legacies, to be held for the use and benefit of the plaintiffs, or any other person, and he insists that the purchases enure for his sole use and benefit. This defendant saith, that he also purchased of the Presbyterian Church, in Raleigh, the negroes bequeathed to said church by the eleventh clause of the established will (plaintiffs' Exhibit B), and herewith exhibits a copy of their assignment marked "N"; that he procured from the defendants, the Right Reverend Leonidas Polk and John Devereux, the son of this defendant, assignments of all their right to the negroes of the said testatrix, as provided by the seventh clause of the established will, as shown by exhibits herewith filed, marked "Q" and "P." Having carried the slave Evelina to Philadelphia, and made there a suitable provision for her, comfortable and respectable employment at fair wages; in fact, having done, with one exception, hereinafter mentioned, everything which this
65 defendant thought was obligatory on him in the view he took of conscientious obligation, this defendant thought he might safely begin to indemnify his sister, the defendant, Frances Ann, against the consequences of their mother's dissent from the will of her husband, their father. This defendant saith that, with the consent of the said Whiting, this defendant covenanting to save the said Whiting from all claims under the will of the said Frances, and particularly against the claim of the Union Theological Seminary, whose assignment had not then been ob-

tained, this defendant, by deed dated the 13th day of October, A. D. 1852, conveyed one-half of the negroes, late the property of the said Frances and remaining in the hands of the said Whiting, to Lucius Duncan, the trustee of the defendant, Frances Ann, the original of which this defendant supposes to be in the possession of the said trustee, or the said Frances, or some one for her, a copy of which, marked "O," this defendant hath filed as an exhibit to this answer. This defendant saith that the proportion of the loss occasioned by the said dissent was nearly one-third to the said Frances and two-thirds to this defendant, but the husband of the said Frances had then recently suffered a heavy loss from cholera among his negroes, and this defendant felt it proper not to weigh minutely the respective proportions of the said slaves to be assigned to her and himself. In setting apart the share of the said Frances, this defendant was indemnified against a debt due him by her husband, which this defendant believes was a proper charge upon the separate estate of the said Frances, the object of the parties being to give the defendant, Frances, one-half of the benefit of everything done by this defendant. This defendant saith, in all this he was advised, and thought, and still thinks, he did no injury to the plaintiffs. He left to them entirely untouched everything which was provided for them by the deeds of July 3rd, 1839, Exhibits A and Z; he took nothing but what they were, by both the parents of this defendant, expressly cut off from. If this defendant made anything by his arrangements above set forth, it was made not out of the plaintiffs, for it never was theirs, and was used in repairing loss inflicted upon this defendant and his sister, the defendant, Frances Ann. This defendant, also, by his arrangements, denied no rights of the plaintiffs; on the contrary, he submitted to deliver to them their share of anything in the hands of this defendant which had not been disposed of by either of his parents, and of this readiness of this defendant the plaintiff, Frank, had full notice.

This defendant saith that, upon the Exhibit A, filed by the plaintiffs, he submits that the plaintiffs have no right to an account of the disposition of the said sum of $50,000, or any part thereof, and this defendant declines to make any discovery in respect thereto. So, also, this defendant saith he is not, and never was, the personal representative of his mother, the testatrix, Frances, and never had, and hath not now, the custody of her papers. The administrator, Mr. Whiting, handed to this defendant a few papers, which this defendant thought might be possibly necessary to his security, and which, having no reference to anything but the $50,000 charge upon this defendant, this defendant declines to produce. This defendant, therefore, saith he is not bound to make any discovery in respect to the estate, papers, or accounts of the said Frances, or to account to the plaintiffs for the same, and this he submits to the judgment of this honorable court. This defendant saith he hath no recollection of any advancement of any kind or amount made to him by the said Frances, after the death of her said husband, unless such advancement result
66 from the following facts: The mother of the plaintiff, on one of her visits to North Carolina, was asked by a slave, then about to be sold, who had faithfully and kindly attended her husband in some of his numerous illnesses, to pay him, in pursuance of a promise made by her to the said slave. The said mother declined doing so, but importuned the testatrix, Frances, to buy him, in the name, and for the use of this de-

fendant will produce when required. This defendant saith, believing that the will, Exhibit C, was determined upon by the said Frances when she was in full possession of her understanding, in consequence of a very free conversation with this defendant as to the large inroads upon her right to charge, and that she had then determined to reduce the legacies to religious charities one-half, but had failed to effect her settled and well-formed determination by unfortunately postponing the completion of it to a period when, in the opinion of the attesting witnesses, she was incompetent, he felt no scruples in endeavoring to reduce these legacies according to the matured and expressed wishes of the said Frances. This defendant saith that, thereafter acting for himself, and because of his conviction of his mother's wishes, he, as his convenience and ability permitted, proceeded to settle with the remaining four charities; but because of his peculiar legal position (which will appear by the 16th clause of the established will), he was more successful with them and procured assignments from them for the sum of two thousand dollars respectively paid them; copies of which assignments, marked "U," "T," "S," and "R," are filed as exhibits; and this defendant saith that the dates at which the negotiations for all the said assignments were brought to a conclusion he believes to be correctly stated in said copies. The suit finally resulted in the establishment of the first will (plaintiffs' Exhibit B), for the causes above herein set forth.

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65 defendant thought was obligatory on him in the view he took of conscientious obligation, this defendant thought he might safely begin to indemnify his sister, the defendant, Frances Ann, against the consequences of their mother's dissent from the will of her husband, their father. This defendant saith that, with the consent of the said Whiting, this defendant covenanting to save the said Whiting from all claims under the will of the said Frances, and particularly against the claim of the Union Theological Seminary, whose assignment had not then been ob-

tained, this defendant, by deed dated the 13th day of October, A. D. 1852, conveyed one-half of the negroes, late the property of the said Frances and remaining in the hands of the said Whiting, to Lucius Duncan, the trustee of the defendant, Frances Ann, the original of which this defendant supposes to be in the possession of the said trustee, or the said Frances, or some one for her, a copy of which, marked "O," this defendant hath filed as an exhibit to this answer. This defendant saith that the proportion of the loss occasioned by the said dissent was nearly one-third to the said Frances and two-thirds to this defendant, but the husband of the said Frances had then recently suffered a heavy loss from cholera among his negroes, and this defendant felt it proper not to weigh minutely the respective proportions of the said slaves to be assigned to her and himself. In setting apart the share of the said Frances, this defendant was indemnified against a debt due him by her husband, which this defendant believes was a proper charge upon the separate estate of the said Frances, the object of the parties being to give the defendant, Frances, one-half of the benefit of everything done by this defendant. This defendant saith, in all this he was advised, and thought, and still thinks, he did no injury to the plaintiffs. He left to them entirely untouched everything which was provided for them by the deeds of July 3rd, 1839, Exhibits A and Z; he took nothing but what they were, by both the parents of this defendant, expressly cut off from. If this defendant made anything by his arrangements above set forth, it was made not out of the plaintiffs, for it never was theirs, and was used in repairing loss inflicted upon this defendant and his sister, the defendant, Frances Ann. This defendant, also, by his arrangements, denied no rights of the plaintiffs; on the contrary, he submitted to deliver to them their share of anything in the hands of this defendant which had not been disposed of by either of his parents, and of this readiness of this defendant the plaintiff, Frank, had full notice.

This defendant saith that, upon the Exhibit A, filed by the plaintiffs, he submits that the plaintiffs have no right to an account of the disposition of the said sum of $50,000, or any part thereof, and this defendant declines to make any discovery in respect thereto. So, also, this defendant saith he is not, and never was, the personal representative of his mother, the testatrix, Frances, and never had, and hath not now, the custody of her papers. The administrator, Mr. Whiting, handed to this defendant a few papers, which this defendant thought might be possibly necessary to his security, and which, having no reference to anything but the $50,000 charge upon this defendant, this defendant declines to produce. This defendant, therefore, saith he is not bound to make any discovery in respect to the estate, papers, or accounts of the said Frances, or to account to the plaintiffs for the same, and this he submits to the judgment of this honorable court. This defendant saith he hath no recollection of any advancement of any kind or amount made to him by the said Frances, after the death of her said husband, unless such advancement result
66 from the following facts: The mother of the plaintiff, on one of her visits to North Carolina, was asked by a slave, then about to be sold, who had faithfully and kindly attended her husband in some of his numerous illnesses, to pay him, in pursuance of a promise made by her to the said slave. The said mother declined doing so, but importuned the testatrix, Frances, to buy him, in the name, and for the use of this de-

fendant, which the said Frances did, at the cost of twelve hundred dollars. This defendant saith he was not aware of the said purchase for some time after it was made. This defendant did not like that the mother of the plaintiff should show her grateful feelings to the said slave at this defendant's expense. He was, moreover, certain that the said negro was at the time of the purchase laboring under a mortal disease. This defendant, therefore, promptly repudiated said purchase, and refused to have anything to do, on his own account, with the said purchase; and thereupon this defendant was instructed by his mother to pay the price she had agreed to give, and charge the amount thereof to her, and take possession of the slave. This defendant did as requested, and found the slave nothing but of bill of expense, costing this defendant about two hundred dollars, when he died, as this defendant had foreseen, within about one year after the purchase. This defendant is advised and believes, and submits to the judgment of this honorable court, that even if these facts, under the general law upon that subject, constituted an advancement, it is not one under the circumstances of this case, where the plaintiffs claim, not upon a general intestacy, but merely their share of what has not been by the will of the testatrix otherwise disposed of.

This defendant saith that about the year 18 , the business in which the plaintiff's father was then engaged having proved unfortunate, he was advanced in land of the estate of the said Frances Devereux of the value of about $, then conveyed to him by deed of the said Frances and her husband, the said John. This defendant also saith that during this defendant's frequent absences from Raleigh, the residence of his mother, William D. Cooke, heretofore mentioned in the pleadings, and also one of the executors appointed in the established will of the said Frances, acted as the friend and business agent of the said Frances; that upon some occasion, while so acting, he handed this defendant an assignment made by the said Frances, and, as this defendant believes, in the handwriting of the said William D. Cooke, in favor of this defendant for eight thousand dollars, on account of the said sum of $50,000, to enable this defendant to employ a clergyman for the instruction of his slaves; that this defendant generally, and as he was able, in consequence of the often repeated request of the said Frances, had a clergyman for that purpose. This defendant saith, at the time of drafting this answer, he cannot find said assignment, but prays permission hereafter to file the same and claim the benefit thereof, should it become necessary in the progress of this suit.

Further answering, this defendant saith that the plaintiffs have received from the estate of the said Frances Devereux all to which they, or either of them, was or is entitled under her will or otherwise under the law of the land; that, she having died testate, the plaintiffs have no right to call for any account of advancements made by her to any of her children, such advancements, whenever made, being required by the laws of the State to be accounted for only in the case of total intestacy.

Further answering, this defendant saith that after the making of the settlement of July, 1839, by the said John and Frances, the said Frances
67 ceased to have any right or interest in the lands and real property comprised therein, and became and was a mere stranger to the estate therein, which became and was wholly vested in this defendant in

fee-simple; that the power by the said settlement created in her to charge, from time to time, and in such proportions as she might choose, the sum of $50,000, upon this defendant, was a mere power in gross, collateral to the land or to this defendant's estate therein, and was not, in any sense of the term known in law, property; and it being expressly provided in the said settlement that "if the said sum of money, or any part thereof, shall remain unpaid, or shall not be invested during her life, and if the said Frances shall not by deed, or will, or writing in nature thereof, or by some other act, give, grant, dispose, or direct any payment, investment, or application of the same, then the said sum of money, or so much thereof as shall remain not paid, given, granted, disposed of, or directed to be invested, paid, or applied, shall be considered as lapsing, and the charge therefor as extinguished for the benefit" of this defendant; and this defendant insists that the will of the said Frances contains no gift, disposition, or direction of payment, application, or investment of any part thereof, within the meaning of the said proviso, and therefore, that the whole residue of the said sum, as it stood at the death of the said Frances, lapsed, and all right to raise or charge it upon this defendant ceased. If in this conclusion this defendant shall by this honorable court be deemed in error, then this defendant insists that the legacies given by the will of the said Frances were first payable out of her personal assets, and no part of the said residue being liable thereto, except what may be absolutely necessary to supply any deficiency in the said personal property to satisfy the said legacies; and as there is no residuary clause in the said will, the residue of the said sum is undisposed of, and, if undisposed of, is, by the terms of the settlement, lapsed for the benefit of this defendant, and cannot be claimed by the next of kin, since none can claim the same or any portion thereof but in virtue of a gift or direction of the said Frances.

Further answering, this defendant saith, that upon the face of the plaintiff's bill, and the relief thereby sought, it manifestly appears, as well as from the matters in this answer set forth, that an account of the administration of the assets of the said Frances ought to be and must be taken, and according to the course of this honorable court a personal representative of the said Frances is a necessary party, without which this court ought not to and will not proceed therein. Wherefore, and by reason of such omission of the personal representative of the said Frances, the said bill and this suit are defective and insufficiently constituted; and this defendant prays the full benefit thereof, as if the same were made the ground of a demurrer or were specially pleaded in bar to the said bill. And this defendant prays to be hence dismissed with his costs, &c.

GEORGE E. BADGER.
B. F. MOORE.
H. W. MILLER.
P. H. WINSTON.

STATE OF NORTH CAROLINA,
Halifax County:

Thomas P. Devereux, the defendant in the within and foregoing answer mentioned, maketh oath that all the matters of fact in the said
68 answer stated as within his own knowledge are true, and those

therein set forth upon information, belief, or otherwise, he believes to be true.

T. P. DEVEREUX.

Sworn & subscribed before me.

E. P. W.

I, the said Charles N. Webb, esquire, one of the justices of the peace, and ex officio one of the judges of the court of pleas and quarter sessions for the above-mentioned county of Halifax, do certify that on the 11th day of July, A. D. 1859, at Halifax aforesaid, the foregoing affidavit was duly sworn and subscribed before me by the said Thomas P. Devereux.

Given under my hand at Halifax the day and year above written.

CHARLES N. WEBB, *J. P.* [SEAL.]

Exhibit Z, with answer of T. P Devereux.

Copy of deed from John Devereux to Thomas P. Devereux, of July 3d, A. D. 1839.

This indenture was made this 3rd day of July, in the year of our Lord one thousand eight hundred and thirty-nine, between John Devereux, esquire, of the county of Wake, of the one part, and Thomas P. Devereux, of the same county, of the other part, witnesseth:

That whereas the late George Pollok, of Halifax County, hath recently departed this life intestate, unmarried, and without issue, leaving Frances, the wife of the said John and sister of the said George, and the children of a deceased sister of the said George, his next of kin, entitled to distribution of his personal estate, of which the share or portion of the said Frances is one moiety or equal half part; and whereas the said George, at his death, was possessed of and entitled unto a very large personal estate, consisting of negro slaves, bank stock, horses, cattle, monies, farming utensils, and stock, and other personal goods, chattels, and effects, to the one moiety or equal half part whereof (remaining after the payment of his just debts) the said John is entitled in right of his wife, the said Frances; and whereas the said Thomas hath obtained letters of administration from the court of pleas and quarter sessions of Halifax upon the personal estate of the said George Pollok, of which he hath possessed himself, and the said John desires to convey, settle, and assure the said estate to which he is entitled as aforesaid upon certain trusts and for certain purposes hereinafter particularly specified and set forth:

Now, therefore, the said John Devereux, in consideration of the premises and of the sum of one dollar by the said Thomas P. Devereux to him in hand paid, and for divers other good causes and considerations him thereunto moving, hath released, bargained, sold, and assigned, and doth hereby remise, release, bargain, sell, and assign unto the said Thomas P. Devereux all the before-mentioned moiety or half part of the said slaves, bank stock, horses, cattle, monies, farming utensils, and stock, and other personal goods, chattels, and effects which were of the said George Pollok at his death, with all the interest, right, property, claim, and demands, as well of the said Frances as of the said John in and to the same, to have

and to hold to the said Thomas P. Devereux, his executors, administrators, and assigns forever, for and subject nevertheless to the charges, uses, trusts, provisoes, limitations, and directions following, that is to say—

69 First. That the said Thomas shall pay to the said John the full sum of ten thousand dollars, one moiety or half part thereof to be paid on the first day of March, A. D. 1841, and the residue one year thereafter.

Secondly. That the said John Devereux shall be at liberty, and doth hereby reserve to himself the right, to select and take away five of the negro slaves to himself as his own property, without paying any price or consideration therefor.

Thirdly. That the said Thomas, his executors, administrators, and assigns, shall pay to Elizabeth Devereux and to Georgina Devereux, infant daughters of the late George P. Devereux (son of the said John) by Sarah Elizabeth Devereux, his wife, each the sum of eleven thousand dollars, to be paid to them respectively on their attaining full age or marriage, with interest therefor after the first day of March, A. D. 1842, as follows, that is to say, for five years thereafter at the rate of three per centum per ann'm, and thenceforward at the usual rate of six per centum per annum, payable on the first day of March in each and every year, and if one of the two daughters aforesaid shall die unmarried and within age, one moiety or half part of the sum directed to be raised for her shall be paid to the said Sarah Elizabeth, her mother, for her own use, if she shall be living at the death of such daughter, and the other moiety or half part thereof shall lapse and the charge therefor be extinguished for the benefit of the said Thomas; and in like manner on the death of the other daughter unmarried and within age, one moiety of her eleven thousand dollars shall be paid to her said mother (if living), to her own use, and the other moiety thereof shall lapse, and the charge therefor be extinguished for the benefit of the said Thomas; and should the event on which the said Elizabeth shall become entitled to the said moieties of the said sums, or either of them, happen on or after the first day of March, A. D. 1842, then the same shall be payable to her immediately; if before, then on that day. And should it happen at the death unmarried and within age of both or either of the said daughters, their mother shall not be living, then the whole of the portion or portions respectively shall lapse, and the charge therefor become extinguished. And it is hereby declared and provided that the said Thomas P. Devereux may, at his election, anticipate the times for paying the said two sums of money, and, before the same shall become due and payable, may pay the same or any part thereof to any pe'son by law authorized to receive the same on the part of the said daughters or either of them. And, as the said John hath entire confidence in the said Sarah Elizabeth, it is hereby declared and provided that she may receive, and the said Thomas may make to her any payments on account of her said daughters or either of them, and that her receipt for any such payment or payments, whether of principal or interest, shall be a full and ample acquittance of the said Thomas.

Fourthly. That the said Thomas P. Devereux, his executors, administrators, and assigns, shall pay to Frances Ann, wife of the Right Reverend Leonidas Polk, and daughter of the said John, the full sum of fifty thousand dollars, to be paid in equal annual instalments of five thousand dol-

lars, the first payment to be made on the 1st day of March (A. D. 1842), one thousand eight hundred and forty-two, and the said Thomas shall be charged with interest on the said sum of fifty thousand dollars and such portions thereof as may from time to time remain unpaid as follows, that is to say, for five years from and after the first day of March, 1842, at the rate of three per centum per annum, and thereafter at the rate of six per centum per annum; provided always, that the said Thomas P. Devereux may, at his discretion, pay the said sum of money or any part thereof, or any instalment or part of an instalment thereof, from time to time, and at any time, before the same shall become due and payable; and provided also, and it is hereby declared and expressly directed, that of the said sum of fifty thousand dollars one moiety or half part shall be a separate provision for the said Frances Ann Polk, shall be paid into her proper hands, or otherwise be invested or held for the sole and separate use of the said Frances Ann Polk, without being in any manner subject to any charge, release, assignment, disposition, or control of her present or any future husband, nor to pass to, nor vest in the personal representative of the husband, but to be in all respects subject to her order and disposal, and to pass, at her death (if then undisposed of) as if she were a feme-sole and unmarried. And provided further, and it is hereby declared and directed, that should the said Leonidas and Frances Polk, at any time on or before the first day of March, A. D. 1841, elect to take negroes instead of the said sum of fifty thousand dollars, and also to take lands instead of a like sum, directed to be raised for the said Frances, by a deed of conveyance bearing even date with these presents, between the said John and Frances Devereux, of the one part, and the said Thomas of the other part, as will appear by reference thereto, and notify the said Thomas of such election to take lands and slaves instead of the said two sums of money, or should the said Thomas on or before the said first day of March, A. D. 1841, elect and notify the said Leonidas and Frances Ann of such his election to give lands and slaves instead of the said two sums of money, then on the first day of January, A. D. 1842, instead of the said sum of fifty thousand dollars, directed to be raised for the said Frances Ann Polk, there shall be allotted to her out of the negro slaves aforesaid, such number of slaves in families as shall, at a fair valuation, be equal to the said sum of fifty thousand dollars, one moiety in value of which said slaves, so to be allotted to the said Frances Ann, shall be properly conveyed and assured by the said Thomas to her sole and separate use, excluding entirely all right therein of her present or any future husband, and placing the same at her entire and absolute disposal, as if she were a feme-sole and unmarried. And the said John doth hereby declare all the foregoing sums of money and payments directed to be paid and satisfied to be express charges and liens upon all the property, and particularly upon the negro slaves hereby conveyed, and subject to the same, and after the satisfaction thereof, the said John doth hereby declare, that the said Thomas shall hold all the property and estate hereby conveyed (except the slaves) to and for his own proper use, benefit, and behoof forever. And as to all the said negro slaves, the said John doth declare that the said Thomas shall hold the same to and for the following uses, trusts, intents, and purposes, that is to say, upon trust for his own use, benefit, and behoof, for and during the term of his natural life, and no longer, and from and after his death, upon

trust, for the payment and satisfaction, and to stand charged with the payment and satisfaction, of all and every the debts which the said Thomas may owe, at the time of his death, and subject thereto upon trust for any one or more of the children (born or to be born) of the said Thomas, their wives or husbands, for such estates, upon such trusts to such uses, and subject to such charges, conditions, and restrictions, as he, the said Thomas, shall by any will or deed direct, limit and appoint; and should the said Thomas make an appointment to or in favor of more than one of his said children, sons-in-law, or daughters-in-law, it is
71 hereby declared that they shall take in such proportions as he shall direct, and that no disproportion of value, however great, shall be deemed or taken to make the appointment illusory, or in any manner to defeat the same, but that his power shall be absolute and without restriction to appoint the whole to one, in exclusion of the residue, to some, in exclusion of the residue, or to all, and if to more than one or to all, then with such difference of value, as he may please, between them, though to some he should appoint a mere nominal portion, and in default or for want of any such appointment, then upon trust for the children of the said Thomas, who shall survive him, and their executors and assigns forever, share and share alike, and should any child of the said Thomas die during the life of the said Thomas, leaving issue, which shall survive the said Thomas, such issue shall stand in the place of such deceased child, and take the same share as would, by such child, have been taken upon his or her surviving the said Thomas; and it is further declared that the issue of any child of the said Thomas shall, after the death of such child, be deemed within the power of appointment above given to the said Thomas. And it is hereby declared that for any purpose of partition, or for paying off and satisfying any of the sums of money above charged upon the said slaves, and (after the satisfaction of the said charges) for the securing or satisfaction of any debt or debts of the said Thomas, or for the purpose of changing the nature of the fund, and making other investments thereof, as to the said Thomas may appear expedient, the said Thomas shall possess full and absolute power to sell, exchange, grant and otherwise dispose of all or any of the slaves, as he, from time to time, may deem proper, and such sales, exchange, or other disposition shall pass the title discharged of any trust; and the said Thomas, when the said power shall be exercised for the last above-mentioned purpose, shall hold or invest the proceeds of such disposition upon the same trusts, and for the same purposes, and with the same powers, for and with which he held the slave or slaves disposed of.

In witness whereof the said John Devereux and the said Thomas P. Devereux have hereunto set their hands and seals this the day and year first above written.

JOHN DEVEREUX.
T. P. DEVEREUX.

Signed, sealed, and delivered (interlineations and erasures first made) in presence of—

GEORGE E. BADGER.

Probate of deed.

NORTH CAROLINA:

This day, the third of July, in the year 1839, before me, Wm. Gaston, at Raleigh, was the due and legal execution of the foregoing deed, as their deed, respectively, for the purposes therein declared, acknowledged by John Devereux and Thomas P. Devereux, the parties thereto.

Let it be registered.

WM. GASTON.

Certificate of registration in Wake Co.

Registered in the register's office of Wake County, in book No. 13, and pages 434, 435, & 436, the 16th day of July, A. D. 1839.

RICHARD SMITH, *Reg'r.*

Examined.

WM. H. TERRELL.

72 *Certificate of registration in Northampton Co.*

Registered in my office of register March 9th, 1848, book No. 32, pages 406 & 409 inclusive.

SAMUEL CALVERT,
P. R. of Northampton County.

Endorsement on Exhibit Z.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

Exhibit X, with answer of T. P. Devereux.

Copy of deed of explanation from Frances Devereux.

State of North Carolina, to all people to whom these presents shall come:

Frances Devereux, of the city of Raleigh, in the said State, relict of John Devereux, late of the said city, sendeth greeting: Whereas by deeds dated in the month of July, 1839, a settlement was made by the said Frances, by and with the advice and consent of her said husband, of certain estates, both real and personal, then late the property of George Pollok, deceased, to which the said Frances had succeeded; and whereas in and by the same the sum of fifty thousand dollars was secured to the said Frances, together with an annuity of three thousand dollars; and whereas the annuity was by the said Frances understood to be the interest of the said sum of fifty thousand dollars, and not in addition thereto, and was to abate as the principal of the said sum was from time to time paid; and whereas doubts have arisen whether the said deed may not bear a contrary construction, and the said annuity be chargeable on the said estate over and above the said fifty thousand dollars:

Now, these presents are to declare that the true meaning and intent of

the part of the said settlement above referred to is that the sum of fifty thousand dollars, with the annual interest thereon, was to be hereby reserved to the said Frances, and that the said interest was to cease pro rata as portions of the said principal sum were from time to time paid and discharged, in the same manner as if the same was a debt due by the said estate, and that no annuity except the said interest was intended to be reserved by the said settlement to the said Frances.

In testimony whereof the said Frances hath hereunto set her hand and affixed her seal this day of , in the year one thousand eight hundred and forty-five.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES IREDELL.

Endorsement on Exhibit X.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

73 *Exhibit Y, with answer of T. P. Devereux.*

Copy of John Devereux's will.

I, John Devereux, of the city of Raleigh, being now in good health and of sound mind and memory, but considering the uncertainty of life, do make this my last will and testament in manner and form following; that is to say:

I have heretofore on various occasions and in sundry ways given a large amount of property to each and all my children, which I do not now wish them to account for, as the settlements then made I wish to be conclusive, and not have hereafter disturbed in any future settlement of what estate may remain to me at my death.

ITEM 1ST. I wish my executors hereafter named to provide for my body a decent burial, such as my friends may wish, and to pay all funeral expenses.

ITEM 2ND. I request that my plantation may be kept up and worked just as it now is until all my just debts be paid out of the profits of the plantation, and of my other part of my estate that may come into the hands of my executors, except as hereinafter provided for, and I wish all my debts to be fairly and honestly paid.

ITEM 3. I give to my beloved wife, during her natural life, the use of the home I now occupy, near the city of Raleigh, and the use of all my land attached to it, as occupied by me now. I also give her, should she survive me, the use of all the furniture in the house, with liberty to dispose of all or any part of it in any way she may please. I also give her the use of all the servants attached to the house, with liberty to dispose of any of them, in any way she may think proper, by deed of gift or otherwise.

ITEM 4. I hereby give and bequeath to my daughter Frances Ann, wife of the Reverend Leonidas Polk, bishop of Louisiana, one hundred negro slaves, now on my plantation in Bertie County, to be delivered to her after

my just debts are paid, to be taken in families of equivalent ages and value in comparing them to those which are left remaining after the said hundred are laid off to my said daughter, the said one hundred slaves to be free from any control of her said husband, and not liable for any of his debts; and should my said daughter die before me, it is then my desire that the said slaves be divided equally amongst her children, the father taking possession of them for their use.

ITEM 5. As I have already given to the widow and children of my son, George P. Devereux, large portion of my property as they were, in justice to my other children entitled to, it is not my wish that they should receive and part of the property I may leave at my death, except the copy of the encyclopedia now at the plantation, which I hereby bequeath to my daughter-in-law, S. E. Devereux, and two hundred dollars to be paid to each of my grandchildren, Elizabeth and Georgina, to be paid out of my estate on their marriage, or when they attain the age of eighteen years, to be laid out by their mother in a set of suitable tea furniture for each of them.

ITEM 6. My brick houses in Newbern, on South & Front streets, I wish sold at public auction on a credit of one, two, and three years, the purchase money to be secured by a mortgage on the property, and by good personal security; the property I wish put up in the following manner; that is to say: A line running south from the northeast corner of the dwelling-house on Front street, running along the archway close to the east wall to the southwest corner of said dwelling-house; then
74 east along the south wall of said dwelling-house; then east along the south wall of said house three feet; then a south line to the channel of Fish River, all the land, houses, and warehouses situated between the above line and land occupied by the late Hollister I wish put up in one lot, and all the land west of said line and lying between it and land now in the possession of Mr. Van Cochlin I wish put up in an another lot, reserving to both lots the common use of the archway, the large brick house, the long warehouse, and the wharf belonging to the last-described lot. It is wished that my executors may not sacrifice the property, and should not sell at auction, but sell them at their discretion.

ITEM 7. I own three tracts of land in Tennessee, under the care of Samuel McClanaham, who has orders to pay the taxes and sell the same. I wish them sold, as soon as possible and convenient, for what they will bring. Mr. McClanaham has debts of mine to collect to the amount of three to four thousand dollars, which he will account for to my executors.

ITEM 8. I own about 200 acres of land in Bertie County, which I bought of James Gordon. This land I give to my grandson, John Devereux, to him and his heirs and assigns forever.

ITEM 9. My dwelling-house, near Raleigh, in which I have reserved a life estate to my wife and myself, after our deaths I hereby give the house and the land bought with it of the estate of Joel Lane, except the lot commonly called the cow-lot, to my granddaughter, Elizabeth P. Jones, wife of Thomas F. Jones, on condition that she and her husband reside in the house and make it their permanent residence. Should she decline doing so, I hereby give the said house to my granddaughter, Catharine I. Devereux, and in either case all the furniture not disposed of by my wife or myself during our lives is to go with the house. The cow-lot, lying south

of dwelling-house, I hereby give to my granddaughter, Sophia C. Devereux.

ITEM 10. All the land I own in the neighborhood of Raleigh, which was bought of Col. Polk by son, Thomas P. Devereux, except that part sold by me to the railroad company and to Mr. Polk, I hereby give and bequeath to my grandson, John Devereux, to him and his heirs and assigns forever.

ITEM 11. After those negroes I have given to my daughter, Mrs. Polk, are laid off to her use, and six negroes, which my son, Thomas P. Devereux, now holds of mine, and the servants in and about Raleigh, allowing for those my wife may dispose of, there will then be left of negroes belonging to me in the State of North Carolina about one hundred and twenty head; these negroes, be the same more or less, together with all my stock of horses, mules, cattle, sheep, and hogs, together with all my farming utensils, stock of provisions, fodder, or any other property, real or personal, which I may own in North Carolina or elsewhere, I hereby give to my son, Thomas P. Devereux, and to his son, John Devereux, to be divided amongst them in any way they may see fit to divide it, paying all my debts in the way heretofore provided, and should the Right Reverend Mr. Polk desire to receive those negroes I have given his wife before my debts are all paid, in that case he is to receive them on his paying the just proportion of my debts which the negroes so to be delivered would leave to the whole of my unpaid debts and to the residue of my estate. I hereby appoint my son, Thomas P. Devereux, and my grandson, John Devereux, executors of this, my last will and testament, hereby revoking and cancelling all
75 other wills make by me. Signed and sealed this 20th day of October, 1843.

JOHN DEVEREUX. [SEAL.]

Signed, published, and declared to be the last will and testament of John Devereux, in presence of—

C. DEWEY AND JOHN PRIMROSE.

Codicil.

By the within will I do not intend the sale of the houses and lots in Newbern, nor the lands and debts in Tennessee, shall be applied to the payment of my debts, unless I do actually apply them during my life, but the said houses and lots, and lands and debts in Tennessee, together with the said six negroes in the hands of my son, Thomas P. Devereux, shall go to him and my grandson, John Dexereux; but I do intend that the bond of my son Thomas, which I hold, be applied to the payment of my debts, unless that, during my life, I may find it necessary and convenient to collect the same.

JOHN DEVEREUX.

C. DEWEY.
JOHN PRIMROSE.

Probate.

November term, 1844.

WAKE COUNTY:

The foregoing last will and testament of John Devereux, deceased, was

produced in open court and offered for probate, and the due execution thereof duly proven by the oaths of Charles Dewey and John Primrose, the subscribing witnesses thereto, and ordered to be recorded.

JAMES T. MARRIOTT, *Clerk.*

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for said county, certify that the foregoing is a true and correct transcript of the last will and testament of John Devereux, dec'd, as it appears of record in my office.

Given under my hand and official seal, at office in Raleigh, the 14th day of April, A. D. 1859.

[SEAL.] THOMAS J. UTLEY, *Clerk.*

Endorsement on Exhibit Y.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit Y with answer of T. P. Devereux.

Copy of assignment of negroes to Frances Devereux on her dissent from her husband John Devereux's will.

Upon a division of the negroes late the property of John Dev-
76 ereux, the elder, deceased, upon his plantation in Bertie and about his house in Raleigh, the total value of the whole was found to be the sum of forty-nine thousand and fifty-seven dollars..... $49,057

Of the above Frances Devereux, the widow of the said John, is entitled, upon her dissent to the said will, to one-fourth of the said sum, say..... $12,264 25

The Right Reverend L. Polk, for his wife, Frances, is, under the will of the said John, after defraying the share of the said widow, *is* entitled to..... $20,584 50

Thomas P. Devereux and John Devereux, after a similar payment, is entitled to..... $49,047 00

Upon the ballot for said negroes the said Frances, widow, drew the following: Evaline, Mary, Priscilla, Sarah, Silas, Ellen, Carter, Tom, Viney, Solomon, Charity, Ren, Louisa, Charles, Alston, Hopey, Cato, Alfred, Clo, Alston, Lucinda, Millbury, Burwell, John, Elisha, Kate, Lisha, Josh, Betsey, Bird, Louisa, Nancy, Old Betty, Caleb, Hoburn, Peter, Caroline, Watson, Fanny, Old Jack, Judy, Tom, Aaron, Tatty, Becky, Aaron, Sarah, Nancy, Judy, Taffy, Nancy, Primus, Sally Ann, Davay, Hetty, Tillmon, Chaney, Winey, Nancy, Scipio, Old Ned, valued at the sum of twelve thousand one hundred and ninety-five dollars, and is to receive of Thomas P. and John Devereux the sum of sixty-nine dollars and twenty-five cents.

The Right Reverend L. Polk, for his wife, Frances, drew the following negroes: Robin, Abby, Isham, Hatty, Cupid, Turner, Robin, Josh, Silas, Sabra, Haywood, Loft, Hannah, Peggy, Neptune, Primus, Penny, Amos, Abby, Ann Eliza, Harvey, Laura, Eve, Luly, Jacob, Stephen, Mitchell, Essex, Ellen Hog, Robbin, Fanny, Job, Asa, Stanly, Knowledge, Ishmael, Georgia, Esex, Rucky, Criss, Carley, Vinis, Jim, Cherry, Edmond, Tempey, Jim, Dilsey, Shade, Sash, Willie, Rufus, Ned, Betsey, Jack, Frank, Silvia, Anna, Winney, Mary, Armanius, Henry, Dick, Mariah, Sarah, Kelah, Dempsey, valued at the sum of sixteen thousand one hundred and seventy-seven dollars ($16,177), and is to receive from the said Thomas and John the sum of thirty-one dollars and twenty-five cents ($31.25). The said Thomas and John drew the following negroes: Jim, Carpenter, Nancy, Old Tatty, Shoe, Joe, Tider, James, Penina, Manuel, Winny, Isaac, Hamilton, Jerry, Beck, Carter, Joe, Amy, Abel, Sarah, Washington, Olly, Sophy, Susan, Adeline, Thomas, Jack, Harriet, Stewart, Levi, Sally, Jim, London, Bout, Frank, Rose, Nicey, Nancy, Polly, Jack, Frank, Cæsar, Clarissa, Ransom, Kenney, Toney, Murry, Nelson, Sam, Rogers, Frank, Lama, Charley, Lancet, Empero, Mariah, Squire, Sam, Manuel, Emily, Tom, Sam, Esther, Patsey, Mariah, John, Gabiel, Netty, Hilliard, William, Judy, Phillis, Matilda, Hardy, Carney, Nervey, Reuben, Minner, Rilah, Nathan, Andrew, Martha, Mary, Disiah, Lane, Ned, Betsey, Nelson, Louis, Hannah, Harry, Nelson, Daniel, George, Lucy, Moses, Anna, Lucy, William, Febeby, Elijah, Beck, Jesse, Randolph, Harvay, Trissa, Manuel, Jacob, Moriah, William, Pompay, Amarchy, valued at the sum of twenty thousand six hundred and eighty-five dollars, and are to pay the said two sums above mentioned, of sixty-nine dollars and twenty-five cents ($69.25) and thirty-one dollars and twenty-five cents ($31.25).

77 Given under our hands and seals this thirteenth day of November, one thousand eight hundred and forty-four.

LEONIDAS POLK,
For FRANCES A. POLK. [SEAL.]
T. P. DEVEREUX. [SEAL.]
JOHN DEVEREUX. [SEAL.]
FRANCES DEVEREUX. [SEAL.]

Wake County court, August term, 1847.

The foregoing report was returned into court and confirmed and ordered to be recorded.

JAMES T. MARRIOTT, *C. C.*

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for the county aforesaid, certify that the foregoing is a correct transcript of the division of the slaves belonging the estate of John Devereux, deceased, as it appears of record in my office.

Given under my hand and official seal, at office in Raleigh, the 14th day of April, A. D. 1859.

[SEAL.] THOMAS J. UTLEY, *Clerk.*

Endorsement on Exhibit Y.

On the back of which exhibit is the following endorsement, to wit: "Admitted, D. G. F."

Unlettered exhibit with answer of T. P. Devereux.

Copy of the proceedings of the superior court of Wake County in regard to the probate of Frances Devereux's will.

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered that at a superior court of law, begun and held for said county, at the court-house in the city of Raleigh, on the first Monday after the fourth Monday of September, A. D. 1850, before the honorable J. L. Bailey, judge, the transcript of the record of the court of pleas and quarter sessions of Wake County, in the case of Wm. D. Cooke, executor, against the next of kin of Frances Devereux, deceased, in the following words and figures, to wit:

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered that heretofore, to wit, at a court of pleas and quarter sessions, begun and held for the county of Wake, at the court-house in the city of Raleigh, on the 3rd Monday of August, A. D. 1849, the following proceedings were then and there had, to wit: William D. Cooke brings into court two paper writings, one dated 20th August, 1848, and attested by William J. Clarke and Catharine E. Fuller, the other dated
78 23rd December, 1847, attested by George Simpson and Daniel Dupree, which purport to be the last wills of Frances Devereux, deceased, the said Cooke being one of the executors named therein. The said papers are filed, and upon motion of the said William D. Cooke, executor as aforesaid, it is ordered that subpœnas issue to the subscribing witnesses, and that notices issue to Thomas P. Devereux, Leonidas Polk, and his wife Frances, and to Elizabeth J. and Georgina P. Devereux, infant orphans, children of George P. Devereux, deceased, heirs at law and next of kin of said Frances Devereux, deceased, citing them to be and appear at next court, to hear the proceedings of this court in respect to the probate of the said paper writings, as the last wills of Frances Devereux, deceased, and the said Elizabeth J. and Georgina P. Devereux having no guardian in this State, at the instance of their mother, who resides in Connecticutt with the said children, it is ordered that William H. Haywood, jr., be appointed their guardian pro hac vice, and to defend their rights and interest in this pending suit, &c.

Be it further remembered, that at the next term of our court of pleas and quarter sessions, begun and held for the county of Wake, at the court-house in the city of Raleigh, on the third Monday of November, 1849, the following proceedings were then and there had, to wit:

Leonidas Polk and his wife, Frances Polk, and Elizabeth J. and Georgina P. Devereux, infants, by their guardian pro hac vice, William H. Haywood, jr., upon the notice given under the former order of this court, come in and suggest to the court that the said papers offered as the last wills of Frances Devereux, deceased, are not her last will, and that neither of them is her last will, and thereupon the court directs an issue to be made between William D. Cooke, the executor, and the said next of kin of the said Frances Devereux, deceased, whether the paper writing heretofore filed, dated 20th August, 1848, is the last will and testament of Frances Devereux, deceased, or not; 2nd, whether the paper writing heretofore filed, dated 23rd December, 1847, is the last will and testament of Frances Devereux, deceased, or not; and it is ordered that a jury of good and lawful men, &c., be summoned, according to law, at the next sessions of this court to try the said issues, &c.

Thomas P. Devereux admits notice of these proceedings, he being one of the next of kin of said Frances Devereux, deceased. The said suit is then continued from term to term, until August term, 1850, of our said court, when the same is set for trial, the following jury of good and lawful men, to wit: Abel Upchurch, Wm. Patrick, Alfred Wood, John Merritt, John W. Earp, Lewis Nipper, Tenple Robertson, Hiram Weatherspoon, Calvin Jordan, Bazil Yates, James Todd, and Drury Partin, having been duly sworn and empaneled to try the issue whether the paper writing, in the following words and figures, to wit (here follows the will, dated 23rd December, 1847), is the last will and testament of Frances Devereux, deceased, and also whether the paper writing in the following words and figures, to wit (here follows the will, dated the 20th of August, 1848, with codicil of April 16th, 1849), be the last will and testament of Frances Devereux, deceased, and the said jury do say that neither of the said paper writings aforesaid is the last will and testament of the said Frances Devereux, deceased; judgment of the court accordingly, and for costs; from which the plaintiff prays an appeal to the next superior court of law for Wake County, which is granted, and the appeal bond waived.

79 STATE OF NORTH CAROLINA,
Wake County:

I, James T. Marriott, clerk of the court of pleas and quarter sessions for the county of Wake aforesaid, do hereby certify that the foregoing is a true and correct copy of the proceedings had in our said court in relation to the paper writings purporting to be the last will and testament of Frances Devereux, deceased, and also of the said paper writings and the judgment in said court as appears of record.

In testimony whereof I have hereunto affixed the seal of said court, and subscribed my name, at office in Raleigh, this 15th September, 1850.

[SEAL.] JAMES T. MARRIOTT, *Clerk.*

was filed, and the said appeal duly placed upon the trial docket of our said superior court.

The cause is continued from term to term until July (special) term, 1852, when, before honorable John L. Bailey, judge, the following proceedings were had, to wit:

WILLIAM D. COOKE
vs.
NEXT OF KIN OF FRANCES DEVEREUX, DEC'D.

On motion, William D. Cooke has leave to withdraw from this suit altogether, and accordingly his name is stricken therefrom, and he doth in court here surrender and renounce all right and power to qualify or act as the executor of Mrs. Frances Devereux, deceased. (And so Frederick Nash, and , other persons named as executors in both the following papers propounded for probate, do also come into court and surrender and renounce their said right and power to qualify and act as such.) And thereupon Thomas P. Devereux, one of the persons named as executor to the paper writings propounded, is made a party as such, upon his consent that he will pay out of the assetts all costs incurred up to this term, and all the costs actually incurred by the said William D. Cooke.

Whereupon the following jury of good and lawful men, to wit, William Laws, Nathaniel Dunn, William B. May, Albert W. Partin, William L. Terrell, Isham Holding, Wm. H. Scott, Henry Wall, Allen Adams, Drury Partin, John Buffaloe, and John R. Harrison, are sworn and empaneled to try the issue whether the following paper writing, to wit (here follows the will, dated 20th August, 1848, with codicil), is or is not the last will and testament of the deceased, do say and find that the same is not the last will of said deceased. And afterwards the same jury are sworn and empaneled to try the issue whether the following paper writing, to wit (here follows the will of 23rd of December, 1847), is or is not the last will and testament of the said Frances Devereux, deceased, do say and find that the same is her last will and testament.

Ordered, That a procedendo issue to the county court of Wake County, to admit to probate the said last foregoing paper writing and certify the record hereof, &c.

Clerk's certificate.

STATE OF NORTH CAROLINA:

I, James A. Moore, clerk of the superior court of law of Wake
80 County, do hereby certify that the foregoing is a full, true, and perfect transcript of the record of said court (except that the wills, copies of which have been furnished the parties to the suit in which this record is filed as an exhibit, have been omitted) in the matter of the executor of Frances Devereux, against the next of kin of the said Frances, as appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and the seal of said court, at office, this 29th of August, 1859.

[SEAL.] JAMES A. MOORE, *Clerk.*

Endorsement on unlettered exhibit.

On the back of which exhibit is the following endorsement, to wit: Admitted. D. G. F.

Unlettered exhibit with answer of T. P. Devereux.

Copy of the proceedings of the court of pleas and quarter sessions of Wake County in regard to the probate of Frances Devereux's will.

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered that at a court of pleas and quarter sessions, begun and held for the county and State aforesaid, at the court-house in Raleigh, on the 3rd Monday of August, A. D. 1852, when were present presiding and holding said court the worshipful Johnson Busbee, Thomas G. Whitaker, and Green H. Alford, esquires. When the following proceedings were then and there had, to wit:

In the case of William D. Cooke, executor, vs. The Next of Kin of Frances Devereux, deceased, wherein heretofore an appeal was taken to the superior court, the following procedendo was sent down to this court from said superior court:

Superior court of law. Special term. Third Monday in July, A. D. 1852.

STATE OF NORTH CAROLINA,
Wake County:

To the justices of the peace of the court of pleas and quarter sessions of Wake County, aforesaid:

Whereas at the present term of our superior court of law for the county of Wake, aforesaid, a certain suit in the name of William D. Cooke, executor of Frances Devereux, deceased, against next of kin of Frances Devereux, was heard and tried, which said suit was brought up to our said superior court for trial by an appeal from Wake County court, in which there was a caveat to the paper writing purporting to be the last will and testament of Frances Devereux, deceased, and in your said court and in the said suit an issue was made up to try whether said paper writing is and doth contain the last will and testament of Frances Devereux, deceased, and in the trial of the said suit and issue, the third Monday in July, A. D. 1852, the following jury of good and lawful men, to wit, William Laws, Nathaniel Dunn, Wm. B. May, A. W. Partin, William L. Terrell, Isham Holding, W. H. Scott, Henry Wall, Allen Adams, Drury Partin, John Buffaloe, and John R. Harrison, being duly sworn and empanelled to try the issues, &c., find that the said paper writing is and doth contain
81 the last will and testament of Frances Devereux, deceased; we therefore command you that you proceed to have the said last will and testament of Frances Devereux, deceased, which we send down to you with this writ of procedendo, duly entered on the minutes of your said court, and have the same recorded, and that you have duly qualified Thomas P. Devereux, the executor therein named, and that in all respects you proceed in the said matter as the law and statutes direct.

In witness whereof I, Richard P. Finch, clerk of our said court, have hereunto set my hand and affixed the seal of my office, in Raleigh, this 20th of August, A. D. 1852.

(Signed) R. P. FINCH, *Clerk.*

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered that at a special term of the superior court of law, begun and held for the county of Wake aforesaid, at the court-house in Raleigh, on the third Monday in July, A. D. 1852, the following proceedings were then and there had, to wit:

WM. D. COOKE, EX'T'R,
vs.
NEXT OF KIN OF FRANCES DEVEREUX.

On motion, W. D. Cooke has leave to withdraw from this suit altogether, and accordingly his name is stricken therefrom, and he doth in court here surrender and renounce all right and power to qualify or act as the executor of Mrs. Frances Devereux, deceased (and Frederick Nash, Thomas P. Devereux, and John Primrose, other persons named as executors in both the following papers propounded for probate, do also come into court and surrender and renounce their said right and power to qualify and act as such), and thereupon, Thomas P. Devereux, one of the persons named as executor to the paper writing propounded, is made a party as such, upon his consent that he will pay out of the assets all costs incurred up to this time, and all the costs actually incurred by the said W. D. Cooke; whereupon the same jury are sworn and empaneled to try the issue whether the following paper writing, to wit:

In the name of God, amen: I, Frances Devereux, in the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds, settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself; and I would here declare that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour, Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance further than as proofs of my faith. I cast them from me and cling to the righteousness of my Saviour as my plea at the bar of Him who searcheth the heart. As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they might be saved from the temptations which accom-
82 pany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

ITEM 1ST. I give and bequeath to the trustees of the Caldwell Institute, and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina, and having been incorporated by the legislature of North Carolina) the sum of four thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually or semi-annually, as required, during that time; the interest alone of said sum to be applied in payment

of the salaries of the professors or instructors in said institute wherever it may be located, provided it be within the State of North Carolina.

ITEM 2ND. I give and bequeath to Clement C. Reade, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of four thousand dollars, in trust, for the benefit of the Union Theological Seminary located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary whenever the same shall be received by him, which sum shall be appropriated to the endowment of an additional professorship in said seminary. And until said endowment be completed the interest annually arising from said sum shall be added to the principal, or else applied to, or in the payment of, the salary of any professor or instructor not already adequately provided for.

ITEM 3RD. I give and bequeath to the trustees of the Board of Education of the Presbyterian Church of the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be applied by said board to the education of indigent, pious young men for the gospel ministry, but of the principal of this sum only five hundred dollars shall be used in any one year.

ITEM 4TH. I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them, the sum of four thousand dollars in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the Board of Foreign Missions of the Presbyterian Church in the United States of America, to be applied to the use and purposes of said board and under its direction, and the receipts of said treasurer shall be a full receipt and acquittance of my said executors for the same; but of the principal of this sum only one thousand dollars shall be so used in any one year.

ITEM 5TH. I give and bequeath to the trustees of the Board of Missions of the General Assembly of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be held by the said trustees and their successors forever, to and for the uses and under the direction of the said board of missions of the said general assembly, according to the provisions of their charter, to be appropriated to domestic missions, and only one thousand dollars of the principal to be used in any one year for that purpose.

ITEM 6TH. I give and bequeath to my executors, and the survivors of them, the sum of five hundred dollars, in trust, for the benefit of the Raleigh Female Benevolent Society, which sum shall be loaned out or vested in some profitable stock, and the proceeds thereof alone applied annually in the payment of the salary of the teacher of
83 the school under the care of said benevolent society; provided, the said society shall raise a sum annually which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher, or if said society should cease to exist, then the proceeds of the above five hundred dollars shall be applied to the payment of colporteur to supply religious publications in some destitute part of North Carolina.

ITEM 7TH.—It is my will that all my negroes who at the time of my death shall be in the possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have

secured the crop on the ground at that period; at the expiration of that time my highly-esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes. These he is to take at a valuation, giving bond for the same, payable in ten equal annual instalments, but as I know he is at great expense to promote the spiritual improvement of his slaves, I desire the expense attending their removal to be paid by my estate. Should John Devereux take any of said negroes, the same terms will be required as in the case of Leonidas Polk.

I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes:

First, to Miss Louisa Taylor, daughter of Mrs. Eliza Taylor, fifty dollars annually, during her natural life.

Secondly, to Miss Ellen Anderson, who was brought up by my friend, Mary Jones, the sum of fifty dollars per annum, during her natural life.

Thirdly, to Mrs. Elizabeth Kinns, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow of the said town of Newbern, for the benefit of the said Elizabeth Kinns, during her natural life.

Fourthly, to two girls at the mission-school in Ceylon, who bear the names of Catharine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the American board of commissioners for foreign missions, for their support at the said mission-school.

Fifthly, to the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars per annum, to be applied by him in the cause of female education in the west or valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly, to Thomas P. Devereux, one hundred and forty dollars per annum, to aid in supporting a teacher (should he think fit to employ one) to give religious instruction to the slaves on the Roanoke River, particularly those in the possession of my descendants.

ITEM 9TH.—It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors may deem best; if sold upon credit a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH.—From the funds arising from the sale of the above slaves and the house and lot in Chapel Hill, it is my will that, at the death of Mrs. Eliza Taylor, her daughter, Louisa, shall receive the further sum of one hundred and fifty dollars annually, during her natural life, or should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching school, or arrive at the age of sixty years,
84 then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum, during her natural life, over and above the sum of fifty dollars per annum heretofore provided for her, the same to be paid the said Louisa Taylor by my executors annually.

ITEM 11TH.—I give and bequeath to Jessie Brown, George Simpson,

Seymour W. Whiting, and William G. Clarke, trustees of the Presbyterian church or society in the city of Raleigh, or to their successors in office, five negroes, viz: Tom, Viney, Priscilla, and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct, but should said church or congregation, in process of time, fail to adhere to the doctrine, order, and form of church government set forth in the confession of faith of the Presbyterian church in the United States of America, then and in that case, I direct that the said negroes and their increase shall return to my executors, to be distributed according to law; and further, it is my will, that if the said church or congregation shall at any time fail to raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then, and in that case, the bequest of said negroes shall be void, and they, the said negroes, with their increase, shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

ITEM 12TH.—I give and bequeath to S. S. Souter, of the borough of Norfolk, and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust, nevertheless, for the association known by the name of the "Seaman's Friend Society," of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest to be void.

ITEM 13TH.—I give and bequeath to Elizabeth Lacy, daughter of the Reverend Dowry Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years old, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH.—In consideration of the faithful services of my female servant, Evelyna, it is my will that, at my death, she shall be sold to such person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said Evelyna to such person, upon his executing a bond, with good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually, for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties of Nash, Wayne, and Johnston; and if the said person selected shall fail to perform the consideration of the bond before mentioned, then sale to be void, and the servant girl, Evelyna, is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 15TH.—It is my wish that my servant girls, Rebecca, Delico, and Sally, shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale, but at private sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons; my object being that they shall have masters who will treat them properly, and not take them out of the State.

85 ITEM 16TH. Should my debts at my decease not exceed two thou-

sand dollars, I give my carriage and horses to my beloved son, Thomas P. Devereux; if otherwise, it is my will and desire that my executors should sell all the stock of horses, cattle, hogs, &c., crops and farming utensils, and any personal property I may have in the possession of my grandson, John Devereux (negroes excepted), also my carriage and wagon, or any other property of the same description, and pay all my debts; and should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out, and the proceeds applied to the payment of the balance, until the same shall be fully paid and satisfied, unless my grandson and son-in-law, should arrange the payment of the same in some other manner and take the negroes into their possession. Should it appear, at my death, that the bequests exceed the amount of funds left, my will is, the first five only shall be curtailed, until brought within the limits of the assetts. It is my further will and desire, and I do so direct and appoint, that, if any one or more of the legacies hereinbefore given or intended to be given by me, should fail to take effect through any informality, or from any other cause, that then the sum so failing shall be added to and form a part of the other legacies which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke my lawful executors to execute this my last will and testament according to the true intents of the same, and having full confidence in the integrity and fidelity of my executors, I desire that they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all which I, the said Frances Devereux, do hereunto set my hand and seal this twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-seven, praying that Almighty God, in His good providence and great mercy, would so overrule and direct and care for the several bequests herein made, that thereby His own glory and the good of His church may be promoted.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, published, and declared by the said Frances Devereux, to be her last will and testament in the presence of us, and in the presence of each other do, at her request, subscribe our names as witnesses thereto.

D. DU PREE.
GEORGE SIMPSON.

is or is not the last will and testament of the said Frances Devereux, deceased, do say and find that the same is her last will and testament.

Ordered, that a procedendo issue to the county court of Wake County to admit to probate the said last foregoing paper-writing, and certify the record thereof, &c.

STATE OF NORTH CAROLINA,
Wake County:

I, Richard P. Finch, clerk of the superior court of law for the county of Wake aforesaid, do hereby certify that the foregoing transcript is a

true copy of the proceedings had in the within-named case as on record in my office.

86 Given under my hand and the seal of our said court at office in Raleigh, this 20th day of August, A. D. 1852.

(S'gn'd) R. P. FINCH, *Clerk.*

And the court here doth adjudge the said last paper writing to be the last will and testament of Frances Devereux, deceased, and that the same has been duly proved, and orders the same to be recorded, and no further proceedings are now had in this case.

Be it further remembered that, at a subsequent term of said court, to wit, the third Monday of November, A. D. 1852, when were present, presiding, and holding said court the worshipful William R. Poole, Johnson Busbee, and Thomas G. Whitaker, esquires, the following further proceedings were then and there had, to wit:

Thomas P. Devereux, one of the executors named in the last will and testament of Mrs. Frances Devereux, deceased, appears in open court, by his attorney in fact, George W. Mordecai, and renounces his right to qualify as executor aforesaid, Frederick Nash, senior, John Primrose, and William D. Cooke, the other executors named in the said last will and testament, having heretofore renounced their right to qualify as such.

On motion, S. W. Whiting is appointed administrator upon the estate of Mrs. Frances Devereux, deceased, with the will annexed, and he enters into bond in the sum of fifty thousand dollars, with George W. Mordecai and Thomas P. Devereux as his sureties, who are approved and accepted by the court, and the said S. W. Whiting is duly qualified as such according to law, and license is granted by the court to said administrator to sell the perishable property estate.

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for the county and State aforesaid, certify that the foregoing is a true and correct copy of the last will and testament of Frances Devereux, deceased, together with the proceedings had thereon, as it appears of record and on file in my office

I further certify that there has been no inventory or account of sales filed in my office that appears of record.

Given under my hand and seal of office, at office in Raleigh, this 27th day of February, A. D. 1857.

THOMAS J. UTLEY, *Clerk.*

Endorsement on unlettered exhibit.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

Exhibit M with answer of T. P. Devereux.

Copy of loose paper found in the superior court.

At July term, 1852.

WILLIAM D. COOKE)
vs.
HEIRS, &c.)

On motion, William D. Cooke has leave to withdraw from this
87 suit altogether, and accordingly his name is stricken therefrom, and he doth in court here surrender and renounce all right and power to qualify or act as the executor of Mrs. Frances Devereux, deceased, and so Frederick Nash, and other persons named as executors in both the following papers propounded for probate, do also come into court and surrender and renounce their said right and power to qualify and act as such; and thereupon Thomas P. Devereux, one of the persons named as executor to the paper writings propounded, is made a party as such upon his consent that he will pay out of the assets all costs incurred up to this term and all the costs actually incurred by the said William D. Cooke.

Clerk's certificate.

The above is a true copy of a paper now on file in my office, among the papers of William D. Cooke, executor, &c., against the heirs of Mrs. Frances Devereux, dec'd.

Witness my hand, at office, this 17th June, 1859.

JAMES A. MOORE,
Clerk of Wake Superior Court.

Endorsement on Exhibit M.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit W, with answer of T. P. Devereux.

Statement of the hire and sale of negroes belonging to the estate of Mrs. Frances Devereux, deceased.

1850.	Received for hire, Tom and Viney		$75	
	Do.	Delia	13	
	Do.	Bessy	25	
	Do.	negroes to G. Devereux	83 75	
1851.	Do.	Tom and Viney	80	
	Do.	Delia	25	
	Do.	negroes to J. Devereux	150	
1852.	Do.	Tom and Viney	75	
	Do.	Delia	27	
	Do.	negroes to J. Devereux	150	
1853.	Sale of Delia		650	
	" "	Sally Ann	500	
				$1,853 75
1850.	Paid support woman & children		$97	
	"	Mrs. Hall	2	

	"	physician's bill	15	
	"	burying child	3 50	
1851.	"	support woman & children	90	
1852.	"	support woman & children	90	
				297 50
			½)	$1,556 25
				$778 12
		Bishop Polk's portion		778 12
		Due T. P. Devereux on division of slaves, as per statement of referees		418 88
		Due Bishop Polk		$359 24

S. W. WHITING, *Ex.*

88 *Endorsement on Exhibit W.*

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit K, with answer of T. P. Devereux.

Account of administration of S. W. Whiting.

S. W. Whiting, adm'r.

P. D. asso., in account with estate of Mrs. Devereux, deceased.

1849. DR.

June.	To cash rec'd of T. P. Devereux, trustee		$16,446 34
	" John Devereux, crop of 1848		1,139
	" sale of house		45
	" cow		10 50
1850.	" hire of Tom and Viney		75
	" sale of bacon		40 81
	" hire of Delia		13
	" J. Devereux, rent of land and purchase of stock, 1849		2,840 78
	" hire of negroes		83 75
	" do. Delia, 1851		25 00
1851.	" do. W. J. C., 1850		25 00
1852.	" " of negroes, J. Devereux		150 00
	" " Tom & Viney		80 00
	" " negroes, J. Devereux		150 00
	" " Tom and Viney		75 00
	" " Delia		27 00
1853.	" sale of Delia McKinmore		650 00
	" " " Sally Ann S. Whiting		500 00

CR.

1849.	By cash paid J. Woltnig			$12 89
	" for copying will			25 00
	" Benjamine Perry,	⅜c		34 60
	" J. Primrose,	"		72 68
	" do.	"		10 10
	" John S. King,	"		10 00
	" Wm. Thompson,	"		7 50
	" H. J. Patterson,	"		25 00
	" J. Woltnig,	"		26 27
	By cash paid E. Smith,	⅜c		$14 89
	" J. Brown,	"		17 36

	"	J. M. Towles,	"	34 05
	"	W. J. Clarke,	"	33 57
	"	pastor's salary	"	50 00
	"	Kimboo Jones's note		40 32
	"	Wm. Stronach,	"	181 81
	"	Williams, Haywood, &c.,	"	54 82
	"	J. R. Harrison,	"	4 50
	"	Wm. Thompson,	"	35 35
	"	Peebles, W. & Davis,	"	1 81
	"	Wake County taxes,	"	8 10
	"	Dr. Charles E. Johnson,	"	15 00
	"	Biblical Repository,	"	6 00
	"	Williams, Haywood & Co.		2 75
	"	Bennett T. Blake		10 00
	"	Mr. Hall		2 00
	"	J. McKinmore		2 80
	"	do.		15 21
	"	Thomas Card		2 50
	"	W. H. Putney, taxes		17 28
	"	by Adams, for sundries		44 92
89	By cash paid W. G. Clarke, for sundries			84 38
1850.	"	" support negroes		97 00
	"	subscription to church, Pittsboro'		25 00
	"	Dr. F. J. Haywood's a/c		617 00
	"	note to E. Colburn & int		522 50
	"	" W. Murdoch		522 50
	"	" W. Murdoch		552 50
	"	" Tom March		30 00
	"	" Patsey Simpson		12 00
	"	sh'ff of Wake, taxes, 1848		13 36
	By cash paid Martha Simpson			$11 73
	"	Mrs. Fuller		65 00
	"	E. Colburn, int		67 40
	"	sheriff Bertie, taxes, 1849		129 52
	"	note to Mrs. Wheaton & int		303 36
	"	support of woman & children		90 00
	"	do. do.		90 00
	"	Mrs. Wheaton, int. on note		46 50
	"	R. P. Finch, C. S. C., bill of cost		88 13

Endorsement on Exhibit K.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit V, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from Caldwell Institute.

Whereas the trustees of the Caldwell Institute sold to Thomas P. Devereux, esquire, all legacies, rights, and interests to which they might be entitled under any of the testamentary papers left by his mother, the late Mrs. Frances Devereux, of the city of Raleigh, for the sum of four thousand dollars, and executed to him a written transfer therefor, bearing date the 1st of January, A. D. 1850, which, however, was not satisfactory to him, and he declined to accept the same, and it was afterwards ordered by the said trustees that a written transfer should be executed by their president for their legacies and interest which should be satisfactory to the said T. P. Devereux:

Now, therefore, in consideration of the premises and four thousand dollars secured to be paid to them by the said T. P. Devereux, by bond

bearing date the 1st day of January, 1850, the trustees of the Caldwell Institute have bargained and sold, transferred, set over, released, conveyed, and assigned, and by these presents do bargain and sell, transfer, set over, release, convey, and assign to the said Thomas P. Devereux, in his own individual right and for his sole benefit, all and every legacy bequeathed by the late Mrs. Frances Devereux, his mother, to the said trustees of the Caldwell Institute, and all interest, right, or claim which the said trustees have or may hereafter have, at law or in equity, mediately or immediately, absolutely or conditionally, to any part of the property of the said Mrs. Devereux, deceased, in what manner soever said legacies, claim, or interest may accrue or vest in said trustees.

But it is hereby understood and agreed that the said Thomas P. Devereux is to indemnify the said trustees from all liabilities for costs in the suits now pending in Wake court, upon a caveat upon the testamentary papers of Mrs. Devereux, and in all other suits and proceedings in law and equity in the premises, and that all such litigation shall be prosecuted by him, at his own cost and upon his own responsibility.

90 In witness whereof the said trustees of the Caldwell Institute have hereunto attached their corporate seal, and caused the same to be attested, this 2nd day of September, A. D. 1851.

DRURY LACY,
President Caldwell Institute.

Signed, sealed, and delivered in presence of—
WALTER A. NORWOOD.
JOHN B. WILSON.

Endorsement on Exhibit V.

On the back of which is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit U, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from Board of Foreign Missions of the Presbyterian Church in the United States of America.

To all people to whom these presents shall come, the Board of Foreign Missions of the Presbyterian Church in the United States of America send greeting:

Whereas the said board is entitled to a pecuniary interest under the will of Frances Devereux, late of Raleigh, North Carolina, and whereas Thomas P. Devereux, of said Carolina, hath offered to purchase the same of the said board for his own use and benefit, and hath agreed to pay the said board for the same, by his own note for two thousand dollars, at six months from the date of these presents; and whereas the said board have accepted the said offer:

Now know ye that, in execution of the said agreement, and in consideration of the said sum of two thousand dollars, secured to be paid to them as above written, the said Board of Foreign Missions of the Presbyterian

Church have bargained and sold, assigned and set over, and by these presents do bargain and sell, assign and set over to the said Thomas E. Devereux, all their right to the claim and demand in and to the estate of the said Frances Devereux, and under and by virtue of the provisions of the will of the said Frances; to have and to hold the same, and each and every part thereof, to him, the said Thomas, his executors and administrators, for his and their own use and behoof; it being understood that the said Thomas doth hereby acknowledge that he hath received this assignment at his own risk, and without any right of recourse upon the said board by reason of any failure on the part of the personal representatives of the said Frances to adjust and pay the claims of the said board; and that he doth hereby remove, release, and forever quitclaim to the said board all claim of right to such recourse against them.

And the said board doth hereby authorize and empower the said Thomas, in their name, place, and stead, to sue for, ask, and demand an account and payment of such sum as may be due to them from the said personal representatives of the said Frances, all expenses of such suit or demand to be at the proper charge of the said Thomas, and not at that of the said board.

In witness whereof we, the said secretaries of the said board, by the direction of the executive committee, and in their behalf, have here-
91 unto set our hands and seals this 4th day of November, A. D. 1851, at the mission-house, in the city of New York.

WALTER LOWRIE. [SEAL.]
JOHN C. LOWRIE. [SEAL.]

Witness present—
W. W. OAKLEY.
JAMES MACKEAN.

Endorsement on Exhibit U.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit T, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from the trustees of the Board of Education of the Presbyterian Church in the United States of America.

Whereas Mrs. Francis Devereux, deceased, late of Raleigh, North Carolina, left at the time of her death, two testamentary papers, each purporting to be her last will and testament, in one of which the sum of four thousand dollars is given as a legacy to the trustees of the Board of Education of the Presbyterian Church in the United States of America, and in the other paper the sum of two thousand dollars is given in like manner; and whereas a suit is now pending in Wake court, the purpose of which is to try the question whether either of said papers is in law the last will and testament of Mrs. Frances Devereux; and whereas Thomas P. Devereux, a son of Mrs. Frances Devereux, hath bought the interest (whatever it may be) of said trustees in the estate of Mrs. Devereux:

Now, therefore, know all men by these presents that the trustees of the

Board of Education of the Presbyterian Church in the United States of America, for and in consideration of the sum of two thousand dollars, secured to be paid to them by the said Thomas P. Devereux, do hereby assign, convey, set over, and release to the said Thomas P. Devereux all rights and interest which they have to legacies from Mrs. Frances Devereux, deceased, and they do hereby empower him, at his own risk and cost, to recover and collect to his own use all interest which the said trustees may have in the estate of the said Mrs. Devereux, should it turn out that they are entitled to any legacy or other interest aforesaid.

In witness whereof the said trustees have caused their corporate seal to be affixed to these presents, in the city of Philadelphia, on this the twenty-eighth day of September, A. D. 1850.

Test:

[SEAL OF BOARD OF EDUCATION.] JOEL JONES,
President of the Board of Trustees.

C. VAN RANSELAER, *Secretary.*

Endorsement on Exhibit T.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit S, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from the trustees of the Board of Missions of the Presbyterian Church in the United States of America.

Whereas Mrs. Francis Devereux, deceased, late of Raleigh, North
92 Carolina, left, at the time of her death, two testamentary papers, each purporting to be her last and testament, in one of which the sum of four thousand dollars is given as a legacy to the trustees of the Board of Missions of the Presbyterian Church in the United States of America, and in the other paper the sum of two thousand dollars is given in like manner. And whereas a suit is now pending in Wake court, the purpose of which is to try the question whether either of said papers is in law the last will and testament of Mrs. Devereux, and Thomas P. Devereux, a son of Mrs. Frances Devereux, hath bought the interest (whatever it may be) of said trustees in the estate of Mrs. Devereux:

Now, therefore, know all men by these presents that the trustees of the Board of Missions of the Presbyterian Church in the United States of America, for and in consideration of the sum of two thousand dollars, secured to be paid to them by the said Thomas P. Devereux, do hereby assign, convey, set over, and release to the said Thomas P. Devereux all right and interest which they have to legacies from Mrs. Frances Devereux, deceased, and they do hereby empower him, at his own risk and cost, to recover and collect, to his own use, all interest which the said trustees may have in the estate of the said Mrs. Devereux, should it turn out that they are entitled to any legacy or other interest aforesaid.

In witness whereof the said trustees have caused their corporate seal to

be affixed to these presents, in the city of Philadelphia, on this first day of October, A. D. eighteen hundred and fifty.

[SEAL OF BOARD.] WILLIAM VASSAUSEUR,
President of the Board of Trustees.

A. SYMINGTON,
Secretary.

Endorsement on Exhibit S.

On the back of which exhibit is the following endorsement, to wit "Admitted. D. G. F."

Exhibit R, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from Clement C. Read, as trustee of the Union Theological Seminary.

Whereas Frances Devereux, late of Raleigh, in the State of North Carolina, by her last will and testament, duly admitted to probate in the county of Wake and State aforesaid, gave and bequeathed to the undersigned, Clement C. Read, the sum of four thousand dollars, in trust, for the benefit of the Union Theological Seminary, in the county of Prince Edward and State of Virginia, as will more particularly appear by reference to the said last will and testament of the said Francis Devereux; and whereas it has been agreed by and between the said Clement C. Read, acting as well on behelf of himself as of the said seminary, and Thomas P. Devereux, of Halifax, in the State of North Carolina, that the said Read should, in consideration of the sum of two thousand dollars, paid or secured to be paid to him by the said Thomas P. Devereux, assign to the said Thomas all his right, title, and claim (that is to say, all the right, title, and claim of the said Read) in and to the said legacy of four thousand dollars in the said last will and testament mentioned; but upon the express understanding, agreement, and condition that neither the said Clement C. Read, nor the trustees of the Union Theological Seminary, in the county
93 of Prince Edward aforesaid, shall be held responsible to or by the said Thomas P. Devereux, his executors, administrators, or assigns, in any wise or to any extent, in the event of his or their failure to collect, recover, or realize the said legacy of four thousand dollars, or any part thereof, and that the said Read and the said seminary are to be put to no expense or cost for any suit or suits that may be prosecuted or defended in relation to the said legacy, but the same shall be borne by the said Thomas P. Devereux, his personal representatives or assigns, without any recourse whatsoever, or any account against the said Read or the said seminary.

Now, on compliance on his part with this agreement, and in consideration of the said sum of two thousand dollars, to be paid to the said Read by the said Devereux, as aforesaid, and for other considerations him thereunto moving, the said Clement C. Read doth hereby grant, assign, set over, and convey to the said Thomas P. Devereux, his executors, administrators, and assigns, all his (the said Read's) right, title, interest, and claim in and to the said four thousand dollars, in the said last will and testament bequeathed as aforesaid, with whatever interest may be due

thereon, if any, for the only proper use and behoof of him, the said Thomas P. Devereux, his executors, administrators, or assigns, but without any right of recourse whatever, or to any extent, against the said Read, or the said theological seminary, or the trustees thereof, in the event the said legacy of four thousand dollars, or any part thereof, should fail to be recovered by the said Devereux, his executors, or assigns, and with the distinct agreement in the above recital set forth.

And the said Clement C. Read doth hereby authorize and empower the said Thomas P. Devereux, his executors, and administrators, and assigns, to ask, demand, and sue for the said legacy, in the proper name of him, the said Read, and for the benefit of the said Thomas, so that all suits and actions in this behalf shall be at the cost and charge of the said Devereux, without any liability on the part of the said Read, or the trustees of the theological seminary aforesaid, for the cost or charges of prosecuting or defending any such actions. And it is distinctly understood, that by this assignment it is intended to vest in the said assignee all the interest, both legal and equitable, of the said Read in the said legacy, but not to impose any obligation on him whatever, or make him liable to any recourse whatever. As witness the following signatures, and seal of the said Clement C. Read hereunto attached, this 24th day of December, A. D. 1858.

CLEMENT C. READ. [SEAL.]

Witness:

AUB. VAUGHAN.
L. Z. VENABLE.

Probate.

STATE OF VIRGINIA,
County of Prince Edward, to wit:

I, F. N. Watkins, a notary public for the county and State aforesaid, do certify that Clement C. Read, whose name is signed to the writing above, acknowledged the same before me in my county aforesaid. From under my hand this 27th December, 1858.

F. N. WATKINS, *N. P.*

94 *Endorsement on Exhibit R.*

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit N, with answer of T. P. Devereux.

Bill of sale for Tom and Viney to Thomas P. Devereux, from trustees of the Presbyterian church, in the city of Raleigh, N. C.

Know all men by these presents, that we, S. W. Whiting and J. R. Harrison, P. Bubee, R. Maddox, R. B. Scovell, J. Brown, and W. J. Clarke, trustees of the Presbyterian church in the city of Raleigh, have bargained and sold, and by these presents do bargain and sell, to T. P. Devereux, of the county of Halifax, all the right, title, claim, and demand which the said Presbyterian church hath, or can have, under the will of the late Mrs.

F. Devereux, in and to the following negroes, to wit, Tom, aged about fifty-seven; Viney, aged about fifty-three; Priscilla, aged about thirty, and her boy-children, George, Henry, and Robert, to have and to hold the said negroes to him, the said Devereux, his heirs, executors, and administrators forever.

In witness whereof the said trustees have hereunto set their hands and affixed their private seals, there being no seal of the said corporation, this 29th day of August, A. D. 1851.

S. W. WHITING. [SEAL.]
J. R. HARRISON. [SEAL.]
R. E. MADDOX. [SEAL.]
W. J. CLARKE. [SEAL.]

Witness: C. DEWEY, as to the signatures of S. W. Whiting, J. R. Harrison, R. E. Maddox, and W. J. Clarke.

R. B. SEAWELL. [SEAL.]

Witness: THOS. W. DEWEY, as to the signature of R. B. Seawell.

Endorsement on Exhibit N.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit Q, with answer of T. P. Devereux.

Assignment of right to purchase negroes to Thomas P. Devereux from Rev. Leonidas Polk.

Know all men by these presents that I, Leonidas Polk, of the State of Louisiana, for and in consideration of the sum of five dollars, to me in hand paid by Thomas P. Devereux, of the county of Halifax, and State of North Carolina, have bargained and sold, assigned and set over to the said Thomas all or any right, title, claim, interest, or demand which I have, hold, or am entitled to under and by virtue of the will of Frances Devereux, late of Raleigh, in the said State of North Carolina, deceased, and particularly any right I may have under and by virtue of the said will to purchase the negroes of the said testatrix. To have and to hold all such right to him, the said Thomas, his executors, and administrators forever.

95 In witness whereof I have hereunto set my hand and affixed my seal this 19th day of July, A. D. 1852.

LEONIDAS POLK. [SEAL.]

Signed, sealed, and delivered in presence of—
S. A. SMITH.
S. C. DEVEREUX.

Endorsement on Exhibit Q.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit P, with answer of T. P. Devereux.

Assignment of right to purchase negroes to Thomas P. Devereux from John Devereux.

Know all men by these presents that I, John Devereux, of the county of Bertie, and State of North Carolina, for and in consideration of the sum of five dollars to me in hand paid by Thomas P. Devereux, of the county of Halifax, in the said State, have bargained and sold, assigned and set over to the said Thomas all or any right, title, claim, interest, or demand, which I have, hold, or am entitled to, under and by virtue of the will of Frances Devereux, late of Raleigh, in the said State, deceased, and particularly any right I may have, under and by virtue of said will, to purchase the negroes of the said testatrix. To have and to hold all such right, to him, his executors and administrators forever.

In witness whereof I have hereunto set my hand and affixed my seal this 19th day of July, A. D. 1852.

J. DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
S. C. DEVEREUX.
S. A. SMITH.

Endorsement on Exhibit P.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit O, with answer of T. P. Devereux.

Deed from Thomas P. Devereux to Lucius C. Duncan, in trust, for Frances Ann Polk, dated 13th October, A. D. 1852.

To all persons to whom these presents shall come, Thomas P. Devereux, of Halifax County, in the State of North Carolina, sendeth greeting:

Whereas the said Thomas by writing obligatory, under his hand and seal, bearing date the 19th day of July last, for certain good and valuable causes and considerations him thereunto moving, covenanted to convey to Lucius C. Duncan, of New Orleans, in the State of Louisiana, one-half the negroes of which Frances Devereux, late of Raleigh, in North Carolina, died possessed, deducting from such half negroes equal in value to the sum of three thousand two hundred and forty-
96 eight dollars thirty-eight cents, to have and to hold the said negroes in absolute property, to him, his executors, and administrators, in trust for the sole and separate use of Frances A. Polk, wife of the Right Reverend Leonidas Polk, of said Louisiana, and sister of the said Thomas P. Devereux; also, to assign and convey to the said Lucius C. Duncan a promissory note or single bill of the said Right Reverend Leonidas for the said sum of three thousand two hundred and forty-eight dollars thirty-eight cents, also upon the same trusts, so as to vest beneficially in said Frances one-half of the value of said negroes.

F. Devereux, in and to the following negroes, to wit, Tom, aged about fifty-seven; Viney, aged about fifty-three; Priscilla, aged about thirty, and her boy-children, George, Henry, and Robert, to have and to hold the said negroes to him, the said Devereux, his heirs, executors, and administrators forever.

In witness whereof the said trustees have hereunto set their hands and affixed their private seals, there being no seal of the said corporation, this 29th day of August, A. D. 1851.

S. W. WHITING. [SEAL.]
J. R. HARRISON. [SEAL.]
R. E. MADDOX. [SEAL.]
W. J. CLARKE. [SEAL.]

Witness: C. DEWEY, as to the signatures of S. W. Whiting, J. R. Harrison, R. E. Maddox, and W. J. Clarke.

R. B. SEAWELL. [SEAL.]

Witness: THOS. W. DEWEY, as to the signature of R. B. Seawell.

Endorsement on Exhibit N.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit Q, with answer of T. P. Devereux.

Assignment of right to purchase negroes to Thomas P. Devereux from Rev. Leonidas Polk.

Know all men by these presents that I, Leonidas Polk, of the State of Louisiana, for and in consideration of the sum of five dollars, to me in hand paid by Thomas P. Devereux, of the county of Halifax, and State of North Carolina, have bargained and sold, assigned and set over to the said Thomas all or any right, title, claim, interest, or demand which I have, hold, or am entitled to under and by virtue of the will of Frances Devereux, late of Raleigh, in the said State of North Carolina, deceased, and particularly any right I may have under and by virtue of the said will to purchase the negroes of the said testatrix. To have and to hold all such right to him, the said Thomas, his executors, and administrators forever.

95 In witness whereof I have hereunto set my hand and affixed my seal this 19th day of July, A. D. 1852.

LEONIDAS POLK. [SEAL.]

Signed, sealed, and delivered in presence of—
S. A. SMITH.
S. C. DEVEREUX.

Endorsement on Exhibit Q.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit P, with answer of T. P. Devereux.

Assignment of right to purchase negroes to Thomas P. Devereux from John Devereux.

Know all men by these presents that I, John Devereux, of the county of Bertie, and State of North Carolina, for and in consideration of the sum of five dollars to me in hand paid by Thomas P. Devereux, of the county of Halifax, in the said State, have bargained and sold, assigned and set over to the said Thomas all or any right, title, claim, interest, or demand, which I have, hold, or am entitled to, under and by virtue of the will of Frances Devereux, late of Raleigh, in the said State, deceased, and particularly any right I may have, under and by virtue of said will, to purchase the negroes of the said testatrix. To have and to hold all such right, to him, his executors and administrators forever.

In witness whereof I have hereunto set my hand and affixed my seal this 19th day of July, A. D. 1852.

J. DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
S. C. DEVEREUX.
S. A. SMITH.

Endorsement on Exhibit P.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit O, with answer of T. P. Devereux.

Deed from Thomas P. Devereux to Lucius C. Duncan, in trust, for Frances Ann Polk, dated 13th October, A. D. 1852.

To all persons to whom these presents shall come, Thomas P. Devereux, of Halifax County, in the State of North Carolina, sendeth greeting:

Whereas the said Thomas by writing obligatory, under his hand and seal, bearing date the 19th day of July last, for certain good and valuable causes and considerations him thereunto moving, covenanted to convey to Lucius C. Duncan, of New Orleans, in the State of Louisiana, one-half the negroes of which Frances Devereux, late of Raleigh, in North Carolina, died possessed, deducting from such half negroes equal in value to the sum of three thousand two hundred and forty-
96 eight dollars thirty-eight cents, to have and to hold the said negroes in absolute property, to him, his executors, and administrators, in trust for the sole and separate use of Frances A. Polk, wife of the Right Reverend Leonidas Polk, of said Louisiana, and sister of the said Thomas P. Devereux; also, to assign and convey to the said Lucius C. Duncan a promissory note or single bill of the said Right Reverend Leonidas for the said sum of three thousand two hundred and forty-eight dollars thirty-eight cents, also upon the same trusts, so as to vest beneficially in said Frances one-half of the value of said negroes.

Now, whereas, also, the said negroes have been valued by competent persons, excepting two, as hereinafter mentioned, and the said valuation amounts in all to the sum of nineteen thousand nine hundred and ninety-one dollars, one-half of which, to wit, the sum of nine thousand nine hundred and ninety-five dollars and fifty cents, is to be assigned to the said Lucius C. in manner aforesaid, to wit, the sum of three thousand two hundred and forty-eight dollars thirty-eight cents, in the said writing obligatory of the said Right Reverend Leonidas, and the sum of six thousand seven hundred and eleven dollars twelve cents, specifically in negroes.

Now, know ye, that the said Thomas, for and in consideration of the premises, and in performance of the said obligation, and also in consideration of the sum of fifty cents to him in hand paid by the said Lucius C. Duncan, hath heretofore assigned and set over to the said Lucius the said writing obligatory of the said Right Reverend Leonidas, and doth hereby, upon said considerations, assign and set over to the said Lucius the following negroes, to wit, Solomon, valued at $400; Charity, his wife, valued at $75, and their children, Ben., valued at $650; Louisa, valued at $430; Charles, valued at $500; Sylvia, valued at $350; Isaac, valued at $200; Alston, valued at $500; Lousine, his wife, valued at $175, and their children, John, valued at $500; Irvin, valued at $300; Luanza, valued at $950; Hoban, valued at $725; Melissa, his wife, $450, and child, Joshua, valued at $100 less than nothing; Caleb, valued at $825; Burrell, valued at $900; which said negroes have, by the persons selected to value them, been assessed to the sum of seven thousand one hundred and thirty dollars, leaving to be paid to the said Thomas the sum of four hundred and eighteen dollars eighty-eight cents for equality of division.

And whereas, also, it has been decided by the parties interested in said division that negroes Delia and Sally, part of said lot of negroes, should be sold, the said Thomas doth hereby covenant, grant, and agree with the said Lucius upon a sale of said two negroes, to account with him for the one-half thereof, in a manner to accomplish fully the said trust and agreement, to have and to hold the said negroes and funds, to him, the said Lucius C. Duncan, his executors, administrators, and assigns forever, upon trust, first to respond to any claim that may be established against the said negroes and fund, by reason of any succession to the estate of the said testatrix, or any construction of her will, and, secondly, upon trust to hold the same for the sole and separate use of the said Frances A. Polk, free from and clear of the debts, contracts, or engagements of her husband, the said Right Reverend Leonidas Polk.

And whereas, also, negro Burrell, one of the now hereby conveyed negroes, valued at nine hundred dollars, had, at the time of such valuation, absconded, and is not now in possession, be it known that if, by reason of his never coming to the possession of the said Lucius, or any other
97 person, for the benefit of the said estate, and the said value shall be lost to the said trust estate, then, and in that event, the said loss is, as to one-half thereof, to be borne by the said Thomas P. Devereux.

Given under my hand and seal at Raleigh, in the county of Wake, in said State of North Carolina, this the 13th day of October, A. D. 1852.

T. P. DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—

SOPHIA C. DEVEREUX.

K. RAYNER.

Endorsement on Exhibit O.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

Exhibit L, with answer of T. P. Devereux.

Appointment of S. W. Whiting administrator pendente lite, upon the estate of F. Devereux, dec'd.

STATE OF NORTH CAROLINA,
Wake County:

At a court of pleas and quarter sessions, begun and held for the county of Wake, at the court-house in the city of Raleigh, on the third Monday of August, it being the 20th day of said month, A. D. 1849, when were present, presiding and holding said court, the worshipful Johnson Busbee, Stephen Stephenson, and William F. Smith, esquires, during the session of said court the following proceedings were had, to wit:

William D. Cooke brings into court two paper writings, one dated 20th August, 1848, and attested by William J. Clarke and Catharine E. Fuller; the other dated 23rd December, 1847, attested by George Simpson and Daniel Dupree, which purport to be the last will of Frances Devereux, deceased, the said Cooke being one of the executors therein named.

The said paper writings are filed, and upon motion of the said William D. Cooke, executor as aforesaid, it is ordered, that subpœnas issue to the subscribing witnesses, and that notice issue to Thomas P. Devereux, Leonidas Polk and his wife Frances, and to Elizabeth J. and Georgina P. Devereux, infant orphans, children of George P. Devereux, deceased, heirs at law, next of kin of said Frances Devereux, deceased, citing them to be and appear at next court, to hear the proceedings of this court in respect to the probate of the said paper writings as the last will of Frances Devereux, deceased. And the said Elizabeth J. and Georgina P. Devereux having no guardian in this State, at the instance of their mother, who resides in Connecticut with the said children, it is ordered that William H. Haywood, junior, be appointed guardian pro hac vice, and to defend their rights and interests in this suit, &c.

On motion, it is ordered by the court, that S. W. Whiting be appointed administrator pendente lite upon the estate of Mrs. Frances Devereux, deceased, who enters into bond in the sum of twenty-five thousand dollars, with Thomas P. Devereux and William J. Clarke as his sureties,
98 who are approved and accepted by the court, and the said S. W. Whiting is duly qualified as administrator aforesaid, according to law.

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for said county, certify that the foregoing is a true copy of the proceed-

ings had in said court, relative to the filing of two paper writings, purporting to be the last will and testament of Frances Devereux, deceased, together with a true copy of the proceedings had in said court relative to the appointment of S. W. Whiting, administrator pendente lite, upon the estate of said Frances Devereux, deceased, which appears of record in my office.

Given under my hand and seal of office, at office in Raleigh, the 27th day of June, A. D. 1859.

THOMAS J. UTLEY, *Clerk.*

and appointment of S. W. Whiting administrator, with the will annexed, upon the estate of F. Devereux, deceased.

STATE OF NORTH CAROLINA,
Wake County:

Third Monday of November, A. D. 1852, the 16th day.

Be it remembered that a court of pleas and quarter sessions is this day opened and held for the county of Wake aforesaid, at the court house in the city of Raleigh, when were present, presiding and holding said court, the worshipful William R. Poole, Johnson Busbee, and Thomas G. Whitaker, esquires, when the following proceedings were had, to wit:

Thomas P. Devereux, one of the executors named in the last will and testament of Mrs. Frances Devereux, deceased, appears in open court, by his attorney in fact, George W. Mordecai, and renounces his right to qualify as executor aforesaid, Frederick Nash, senior, John Primrose, and William D. Cooke, the other executors named in the said last will and testament, having heretofore renounced their right to qualify as such. On motion, S. W. Whiting is appointed administrator upon the estate of Mrs. Frances Devereux, deceased, with the will annexed, and he enters into bond in the sum of fifty thousand dollars, with George W. Mordecai and Thomas P. Devereux as his sureties, who are approved and accepted by the court, and the said S. W. Whiting is duly qualified as such according to law, and license is granted by the court to said administrator to sell the perishable estate.

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for said county, certify that the foregoing is a true copy of the proceedings had in said court relative to the appointment of S. W. Whiting as
99 administrator, with the will annexed, of Frances Devereux, deceased, which is of record in my office. I further certify that said bond was duly executed, and is now on file in my office.

Given under my hand and seal of office, at office in Raleigh, the 17th day of June, A. D. 1859.

[SEAL.] THOMAS J. UTLEY, *Clerk.*

Endorsement on Exhibit L.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Filing of exceptions to answer.

And afterwards, during the same term, the plaintiffs aforesaid, by their attorneys aforesaid, file their exceptions to the answer of the defendant Thomas P. Devereux, in the words and figures following, to wit:

Exceptions.

ELIZABETH J. DEVEREUX UMSTED AND GEORGINA P. DEVEREUX, complainants,
vs.
THOMAS P. DEVEREUX AND LEONID'S J. POLK, and Frances Ann Polk, his wife, defendants. } In equity.

In the circuit court of the United States for the district of North Carolina.

Exceptions taken by the said complainants to the insufficient answer of Thomas P. Devereux, one of said defendants.

First. For that the said defendant has not, to the best of his knowledge, remembrance, information, and belief, answered and set forth whether, on or near the 7th day of October, A. D. 1852, the said Thomas P. Devereux, before the appointment of Whiting as administrator, with the will annexed, caused certain slaves belonging to the estate of Mrs. Frances Devereux, deceased, amounting to the number of fifty-seven, to be appraised and divided between the said Devereux and other persons; and whether the said Thomas P. Devereux has now in his possession, or in the possession of his attorneys or agents, an original paper, or a copy thereof, containing the details of said appraisal and division; and what are the contents of said original paper, or the copy thereof.

2ndly. For that the said defendant has not, in the manner aforesaid, answered and set forth what disposition he has made of the fifty thousand dollars, and the annual sum of three thousand dollars, which the said defendant was chargeable with, under the deed of July 3rd, 1839, referred to in the complainants' bill as Exhibit (A), but absolutely declines to make any discovery in respect thereto.

Thirdly. For that the said defendant has not, in the manner aforesaid, answered and set forth the tenor and contents of certain paper writings obtained from the administrator, with the will annexed, Whiting, which he admits he has now in his possession and under his control, and which he admits have reference to the management of the aforesaid charge of $50,000, but absolutely refuses to furnish these complainants with said paper writings or copies thereof.

100 In all which particulars the said complainants except to the answer of said defendant, and humbly pray that said defendant may be compelled to put in a sufficient answer thereto.

This 28th November, 1859.

DANIEL G. FOWLE,
ED. GRAHAM HAYWOOD,
Sol'rs for Compl'ts.

Filing of amendments to answer by T. P. Devereux.

And afterwards, during the same term, the defendant Thomas P. Devereux, by his attorneys aforesaid, files amendments to his aforesaid answer, in the words and figures following, to wit:

Amendments to answer.

In the circuit court of the U. S. for the district of North Carolina. In equity, November term, 1859.

UMSTED AND WIFE AND OTHERS
against
THOMAS P. DEVEREUX AND OTHERS.

The further and amended answer of the said Thomas P. Devereux to certain of the matters embraced in exceptions taken by the plaintiffs to the sufficiency of the original answer of the said defendant.

This defendant, for answer to the matter embraced in the first of the exceptions filed by the plaintiffs to the original answer of this defendant, saith that he has filed herewith a copy of the valuation and division of the slaves of the said Frances, made by Kenneth Rayner and John Devereux, the original whereof this defendant hath in his possession, and which this defendant submits to produce when thereunto ordered by your honor.

And this defendant saith the originals of the said valuation and division, and of the copy of the deed of this defendant to Lucius Duncan, as trustee for the said Frances Polk, a copy of which, marked O, is filed as an exhibit to the original answer of this defendant, are, to the best of this defendant's knowledge and belief, the only papers in existence connected with the said valuation and division.

But this defendant, further answering, saith that it is not strictly true that the said valuation and division was made before the administration of the said Whiting on the estate of the said Frances, as it appears is intended to be intimated in and by the said exception; for he saith that the said Whiting was appointed administrator pendente lite of the said Frances at a county court of Wake, begun on the third Monday of August, 1849, and, as appears by the exhibit filed with this defendant's original answer, marked K, shortly thereafter possessed himself of the property and estate of his intestate, proceeded with the payment and collection of the debts, and, as this defendant believes, had fully administered upon the said estate, excepting the payment of the legacies, before the 13th of October, 1852.

The issue respecting the will of the said Frances was finally decided in July, 1852, and at the date of the said valuation and division all litigation in respect thereof was at an end; and this defendant believes and avers that the subsequent appointment of the said Whiting, at No-
101 vember term, 1852, as administrator, with the will of the said Frances annexed, was for the completion of the said division by the sale of two negro slaves, and it being thought to be necessary, upon the expiration of the grant of administration pendente lite, and this de-

fendant believes and is confident that not a single debt of the said Frances remained unpaid at the date of the letters of administration with the will annexed.

This defendant saith that according to the recollection of this defendant, upon a visit of the defendant, the Right Reverend Leonidas Polk, with his wife, to the city of Raleigh, at the date of the said valuation and division, this defendant stated to them the object and intention of this defendant in his whole conduct in respect to the estate of the testatrix, Frances, and expressed his willingness, as the estate was then for the purposes of this defendant substantially closed, to divide the negroes between this defendant and the said Frances. This defendant recollects the observation of the said Frances, that, as the arrangement amounted to a gift from this defendant to her, she and her husband could not object to anything this defendant might wish to do.

The said Kenneth Rayner and John Devereux were, by the defendant Leonidas, suggested as valuers. This defendant objected to them as connected, but upon the representation of the said Leonidas and Frances that the said John, although the son of this defendant, was the nephew of the said Frances, and the said Kenneth was the brother-in-law of the said Leonidas, this defendant waived his objection, and the valuation and division was made, as set forth in the said exhibit.

As to the second exception of the plaintiffs this defendant saith that if the plaintiffs require of this defendant an account of the fund of $50,000 mentioned in the pleadings as in the hands of this defendant, this defendant, for reasons mentioned in his original answer, most respectfully declines to make any discovery in respect thereto. If the said exception alludes to the annual interest on the said sum, this defendant, submitting and insisting that as to the said interest the plaintiffs have no right to any discovery and account from this defendant, nevertheless, saith that he is willing to state, and doth state for the satisfaction of the plaintiffs, that the whole accruing interest was paid to the said testatrix by this defendant, in cash, every year of her life, from the date of the deed of July, 1839, a copy of which was filed by the plaintiffs as an exhibit to their bill, marked "A," up to her death.

As to the third of the plaintiffs' exceptions, this defendant saith that he did not receive any paper from the said Whiting connected with the estate of the said testatrix, Frances, but did receive some papers connected with the said sum of $50,000; and this defendant most respectfully insists that, as the plaintiffs have no claim to any part of the said sum of $50,000, which may have been in the hands of this defendant, they, of course, have no right to a discovery of any papers in the hands of this defendant connected therewith.

T. P. DEVEREUX.

WILLIAM J. SAUNDERS, *Clerk.*

Unlettered exhibit, with amendments to answer.

Valuation of negroes of Mrs. F. Devereux, deceased.

On a valuation of the negroes belonging to the late Mrs. Frances Devereux, by Messrs. W. I. Hill, of Halifax, and T. Jones and I. J.

102 Williams, of Martin, it was found that there were on the Roanoke 54 in number, and in Raleigh 3 in number.

Upon agreement by the parties, Messrs. John Devereux and K. Rayner proceeded this day to allot the negroes in families between Mr. Thomas P. Devereux and L. Polk in such a way as to divide the negroes into two equal portions, and then from Bishop Polk's lot to set off to Mr. T. P. Devereux negroes enough to pay off a bond, payable by the said Polk to the said Devereux, for $3,284.38, as previously agreed on by the parties.

The whole number of negroes, excepting two, Delia and Sally, exclusive of four classed as expensive, were valued at $20,441; deducting $450 for expenses, leaves $19,991; one-half of which is $9,995.50. From this last sum deduct $3,284.38, due by Bishop Polk to Mr. Devereux, and we have $6,711.12, the amount in negroes to be set apart to Bishop Polk. We accordingly set apart to Bishop Polk the following negroes, to wit:

Solomon and family	7	$2,605
Alston and family	5	1,725
Caleb	1	825
Hoburn and family	3	1,075
Burwell	1	900
	17	7,130

And to Mr. T. P. Devereux the following:

Allston and family	8	3,159
Davy and family	8	3,008
Bird and family	6	1,895
Peter and family	3	1,013
Tom and family	5	1,645
Katy and family	3	725
Millbury	1	600
Nancy	1	50
Sip	1	450
Sarah	1	416
		$12,961
Old Jacob off to keep	1	100
	38	$12,861

Owing to the division having to be made in families, and our not being able to make it exactly equal to both parties, we find that Bishop Polk has to pay to Mr. Devereux $418.88, said Polk's share of the negroes exceeding the sum to which he is entitled by that amount.

It is further agreed on by us, as representatives of the parties interested, that negroes Delia and Sally are to be sold, and Bishop Polk's half of the proceeds of the sale to be appropriated to the payment of this balance to Mr. Devereux, and to paying the expenses of transporting his negroes to Louisiana.

It is further agreed that in case anything should happen to Burwell

(who is now run away), that the loss sustained shall be equally borne by Mr. Devereux and Bishop Polk.

October 13th, 1852.

K. RAYNER.
J. DEVEREUX.

103 *Endorsement on unlettered exhibit.*

On the back of which exhibit is the following endorsement, to wit: "No proof required. D. G. F."

Filing of replication.

And afterwards, during the same term, the plaintiffs aforesaid, by their attorneys aforesaid, file their replication to said answer as amended, in the words and figures following, to wit:

Replication.

Circuit court of the United States for the district of North Carolina. In equity. December 1st, A. D. 1859.

ELIZABETH J. DEVEREUX UMSTED AND Georgian P. Devereux, complainants,
vs.
THOMAS P. DEVEREUX AND LEONIDAS J. Polk and wife, Frances Ann Polk, defendants.

The joint and several replication of the said complainants to the several answer of the defendant Thomas P. Devereux.

These replicants, and each of them, saving and reserving to themselves and each of them all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies in the answer of the said defendant contained, for replication thereunto say that they and each of them do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these replicants and each of them, without that, that any other matter or thing in the said answer contained material and effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied is true; all which matters and things these replicants and each of them are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

DANIEL G. FOWLE,
ED. GRAHAM HAYWOOD,
Sol'rs for Compl's.

Proceedings at June term, A. D. 1860.

And be it remembered that afterwards, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the honorable Asa Biggs, district judge, presiding, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-third year, being the fourth day of said month, came the parties aforesaid by their attorneys aforesaid.

104 *Temporary withdrawal of replication to allow defendant to amend his answer.*

And the plaintiffs, by their attorneys aforesaid, consent to withdraw temporarily their replication aforesaid, in order to allow the defendant Thomas P. Devereux to file an additional amendment to his aforesaid answer.

Filing of amendment to answer by T. P. Devereux.

Whereupon the defendant Thomas P. Devereux, by his attorneys aforesaid, files an additional amendment to his answer aforesaid in the words and figures following, to wit:

Second amended answer of T. P. Devereux.

The amendment to the answer of Thomas P. Devereux to the bill of complaint of Frank Q. Umsted and others against this defendant and others.

This defendant, further answering, saith it is true the said slaves of the estate of the testatrix, except such as were afterwards sold by the said Whiting, were alloted in October of the year 1852, between this defendant and the defendant Mrs. Polk. The said slaves were then in the possession of this defendant and his son, John Devereux, upon hire for that year. Said allotment was made by the permission and with the consent of the said Whiting, who was then administrator pendente lite, and immediately after the determination of the suit respecting the papers propounded as the wills of the said Frances had agreed to become her administrator with the will annexed.

After the allotment, which was merely a valuation and division on paper, without removing the slaves, they continued at their respective places of abode till the end of the year, when the division had practical effect.

It is true that he assigned his right and interest in one-half of said slaves to Lucius Duncan as aforesaid, for the reasons aforesaid, and because he thought by reason of the matters stated he would be well entitled to all of them.

And this defendant saith that after the said Whiting became administrator, at November sessions, 1852, he assented and ratified the division, and allowed said slaves to pass into the possession of this defendant and

the defendant Mrs. Polk, this defendant agreeing to save said Whiting harmless against all demands on account of the legacies bequeathed and the debts of the estate unpaid, if there might be any, the said Whiting submitting at the time to the construction of the will of the said Frances, that he had no right to demand of this defendant the payment of any portion of the residue of the said sum of $50,000 which had remained unpaid to the testatrix.

And this defendant saith that ever after the said 1st day of January, 1853, this defendant hath held and he is informed and believes his codefendants have held, said slaves adversely against the claim and right of the said Whiting as administrator aforesaid, and all other persons whatsoever, and that for this reason, by virtue of sections 3 and 20, of chapter 65 of the revised code, and sections 3 and 18, of chapter 65 of the Revised Statutes, this defendant and his codefendants had, at the commencement of this suit, a perfect title to the said slaves against both of the plaintiffs.

105 And this defendant further saith that if, for any reason, he and his codefendants, or either of them, can by construction be held to have been trustees for the plaintiffs, or either of them, the plaintiff Elizabeth having come to full age in August, 1853, is barred of all demand against this defendant and his codefendants, by reason of the enactments contained in the sections aforesaid of the said Code and Revised Statutes, and this defendant had acquired a perfect right, as against her, to the said slaves.

T. P. DEVEREUX.

STATE OF NORTH CAROLINA,
Halifax County:

Personally appeared before me, John Anthony, clerk and master in equity for the county of Halifax, Thomas P. Devereux, and made oath in due form of law that the several matters of fact stated in the foregoing answer which were within his knowledge are true, and the residue he believes to be true.

In witness whereof the said clerk and master hath hereunto set his hand & affixed his seal of office this 12th day of February, A. D. 1860.

[SEAL.] JOHN ANTHONY, *C., M. E.*

Replication refiled.

Whereupon the plaintiffs, by their attorneys aforesaid, again file their aforesaid replication to the aforesaid answer of the defendant, Thomas P. Devereux, and to all the amendments thereto.

Prosecution bond given by the pl'ffs excepted to.

And thereupon the defendant, T. P. Devereux, by his attorneys aforesaid, excepts to the prosecution bond hereinbefore filed by the plaintiffs, because the same is signed and sealed by two attorneys of this court, which exception is sustained by the court, and the plaintiffs are required to file a new prosecution bond.

New prosecution bond filed by pl'ffs.

Whereupon the said plaintiffs, now and here, in open court, file their new prosecution bond, which is approved by the court, in the words & figures following, to wit:

Prosecution bond.

Know all men by these presents that we bind ourselves to pay Thomas P. Devereux, Leonidas J. Polk, & Frances Ann, his wife, the sum of three hundred dollars. Witness our hands & seals this May 3rd, 1860.

The condition of the above obligation is such that whereas a suit is now pending in the circuit court of the U. S. for the district of North Carolina, in which Elizabeth J. D. Umsted and Georgina P. Devereux are plaintiffs and the above obligees are defendants. Now, if the said suit shall be prosecuted with effect, or in case of failure, the costs of the same be paid, then this bond to be void; otherwise to remain in full force & effect.

ELIZABETH J. D. UMSTED,
By D. G. FOWLE, *Att'y.* [SEAL.]
GEORGINA P. DEVEREUX, [SEAL.]
" JOHN G. WILLIAMS, *Att'y.* [SEAL.]

106 *Proceedings at November term, A. D.* 1860.

Be it remembered that at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the honorable Asa Biggs, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-fifth year, the same being the twenty-sixth day of said month, came the parties aforesaid by their attorneys aforesaid.

Cause set down for hearing.

Whereupon the following proceedings are had in the cause of—

FRANK G. Q. UMSTED AND ELIZABETH J. D. Umsted, his wife, and Georgina P. Devereux, complainants,
against
THOMAS P. DEVEREUX, LEONIDAS J. POLK, AND Frances Ann Polk, his wife, defendants.

On motion of the plaintiffs, by their counsel aforesaid, made in open court here, it is ordered that this cause be set down, and it is hereby set down, to be heard upon the pleadings, exhibits, and proofs herein, and that the same be heard before us next after the hearings already appointed at the next term of this court, to be held on the first Monday in June, in the year of our Lord one thousand eight hundred & sixty-one.

Proceedings at June term, A. D. 1866.

And afterwards, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable George W. Brooks, district judges presiding, sitting in equity,

on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the ninetieth year, the same being the fourth day of said month, come the plaintiffs aforesaid by their attorneys aforesaid.

Motion to reinstate cause on docket.

And suggested to the court now here that by reason of the late civil war and the interruption consequent thereon in the proceedings of this court, their aforesaid cause no longer appeared upon the docket thereof, and thereupon moved the court to allow the said cause to be reinstated on the docket and among the records of the court, in the same state and condition, in all respects, in which it stood and was at the November term, A. D. 1860, the same being the last term of the circuit court of the United States held for the district of North Carolina.

Motion allowed.

Which motion is accordingly allowed by the court, and the said cause is forthwith reinstated upon the docket and among the records of this
107 court in the same state and condition in all respects in which it stood and was at November term thereof, A. D. 1860.

Death and marriage of parties suggested.

Whereupon the following proceedings are had in the cause of—

FRANK G. Q. UMSTED AND ELIZABETH J. D. Umsted, his wife, and Georgina P. Devereux, complainants,
against
THOMAS P. DEVEREUX, LEONIDAS J. POLK, AND Frances Ann Polk, his wife, defendants.

The death of the plaintiff Frank G. Q. Umsted, and the intermarriage of the plaintiff Elizabeth J. D. with Grinfill Blake; also the intermarriage of the plaintiff Georgina P. with John Townsend; also the death of the defendant Leonidas J. Polk, are suggested to the court here, and because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday in November, A. D. 1866.

Proceedings at November term, A. D. 1866.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the ninety-first year, the same being the twenty-sixth day of said month, it appears

to the court that the proper parties interested in the aforesaid cause as plaintiffs have not yet revived their suit against the defendant T. P. Devereux, and because the court here are not yet advised what decree to make of and upon the premises, a day is given to the said defendant, before the court here, on the first Monday in June, A. D. 1867.

Filing of bill of revivor.

And be it remembered that afterwards, to wit, on the 13th day of May, in the year of our Lord one thousand eight hundred and sixty-seven, at the office of the clerk of the United States circuit court for the district of North Carolina, in the city of Raleigh, in the district aforesaid, came the aforesaid Grinfill Blake and Elizabeth G. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, by their attorneys, Ed. Graham Haywood and Samuel F. Phillips, and file in the office of said clerk their bill of revivor against the defendant, Thomas P. Devereux; and also sue out their subpœna in equity against the said Thomas P. Devereux, which said bill of revivor and subpœna are in the words and figures following, to wit:

Bill of revivor.

To the honorable the judges of the circuit court of the United States within and for the district of North Carolina, sitting in equity:

Humbly complaining, show unto your honors your orators and
108 oratrixes, Grinfill Blake, a citizen of the State of New York, and Elizabeth J. Devereux Blake, his wife, and John Townsend, a citizen of the State of Connecticut, and Georgina P. Townsend, his wife, that on or about the 26th day of March, A. D. 1859, your oratrixes, of whom the first above-mentioned was then named Elizabeth J. Devereux Umsted, and the latter, Georgina P. Devereux, by their said names, and together with Frank G. Q. Umsted, the then husband of the said Elizabeth, exhibited their original bill of complaint in this honorable court against Thomas P. Devereux, then a citizen of the State of North Carolina, and Leonidas Polk, then a citizen of the State of Louisiana, and Frances Ann Polk, his wife, as defendants thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying, &c.

And your orators and oratrixes further shew that the said defendant, Thomas P. Devereux, being duly served with process of subpœna, appeared, and the said Leonidas Polk and wife, Frances, being absent beyond the jurisdiction of this court, were not served with process, whereupon the cause proceeded against the said Thomas P. Devereux alone.

And at June term, 1859, of this court it appearing that said Frank G. Q. Umsted had previously died, such death was suggested, and the cause proceeded in the names of the said Elizabeth and the said Georgina alone. And at the same term the said Thomas put in a demurrer to the said original bill, which at same term was set for hearing by consent and also argued and overruled without costs, and the said defendant ordered to answer; and afterwards the said defendant Thomas P. Devereux put in his answer to the said original bill, as in and by, &c.

And your orators and oratrixes further shew that upon the coming in of the said answer your oratrixes took several exceptions to the same, which exceptions were upon argument allowed by the master to whom the same were referred, and that thereupon your oratrixes obtained an order of this honorable court to amend their said original bill, which was done, and that the said Thomas P. Devereux put in his amended answer thereto; and that thereupon your oratrixes filed their replication to such answer. And, &c.

And that afterwards, to wit, at November term, 1860, of this honorable court the said suit was set for hearing at the next term thereof, and that said next term, because of the recent rebellion, was not held at June term, 1861, as regularly it should have been, nor for several years thereafter.

And your orators and oratrixes further shew that before any other proceedings were had in the said suit your oratrixes intermarried, to wit, your oratrix Elizabeth on or about the 9th day of May, 1866, with your orator Grinfill Blake, and your oratrix Georgina P., on or about the 12th day of June, 1861, with your orator John Townsend, whereby the said suit and proceedings became abated.

And your orators and oratrixes are advised that they are entitled to have the same revived, and to be put in the same plight and condition as the same were in at the time of the abatement thereof.

To the end, therefore, that the said suit and proceedings which so became abated as aforesaid may stand revived and be in the same plight and condition as the same were in at the time of such abatement, or that the said defendants may shew good cause to the contrary, may it please your honors to grant unto your orators and oratrixes the most gracious writ of subpœna to revive issuing out of and under the seal of this honorable court, to be directed to the said Thomas P. Devereux,
109 thereby commanding him, at a certain day and under a certain pain to be therein limited, personally to appear before your honors in this honorable court, and then and there to shew cause, if he can, why the said suit and proceedings therein should not stand, and be revived against him, and be in the same plight and condition as the same were at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to your honors shall seem meet.

And your orators and oratrixes shall ever pray, &c.

HAYWOOD, PHILLIPS AND BATTLE,
Sol'rs.

Subpœna.

UNITED STATES OF AMERICA,
District of North Carolina, ss:

The United States of America to Thomas P. Devereux:

We command you that you appear before our judges of our circuit court of the United States of America for the district of North Carolina, at the office of the clerk of the said court, in the city of Raleigh, in said district, on the first Monday in the month of June next, to answer the bill of revivor of Grinfill Blake, a citizen of the State of New York, and Elizabeth J. Devereux, his wife, late Elizabeth J. Devereux Umsted, and John Townsend, a citizen of the State of Connecticut, and Georgina P.

Townsend, his wife, late Georgina P. Devereux, this day filed in the clerk's office of said court, in said city of Raleigh, then and there to show cause, if any you have, why the cause referred to in the pleadings should not be revived, and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of North Carolina, to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the last Monday in November, 1866, and in the ninety-first year of the Independence of the United States.

Issued the 13th day of May, 1867.

[SEAL.] N. J. RIDDICK, *Clerk.*

Memorandum on subpœna.

The within-named defendant is notified that unless he enters his appearance in the clerk's office of said circuit court, at Raleigh, aforesaid, on or before the day to which the within writ is returnable the complaint will be taken against him as confessed, and a decree entered accordingly.

N. J. RIDDICK, *Clerk.*

Proceedings at June term, A. D. 1867.

And afterwards, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and
110 sixty-seven, and of our Independence the ninety-first year, the same being the third day of said month, came the plaintiffs, Grinfill Blake and Elizabeth J. D. Blake, his wife, and John Townsend and Georgeina P. Townsend, his wife, by their attorneys, Ed. Graham Haywood and Samuel F. Phillips, and the defendant, Thomas P. Devereux, by his attorneys, B. F. Moor and Thomas Blagg, also comes.

Return of subpœna.

Whereupon D. R. Goodloe, United States marshal, returns to the said court that he has executed the aforesaid subpœna on the defendant, Thomas P. Devereux, on the twenty-first day of May, 1867, by delivering a copy thereof to him.

Filing of T. P. Devereux's answer.

Whereupon the said defendant, Thomas P. Devereux, by his attorneys aforesaid, files his answer to the aforesaid bill of revivor, in the words and figures following, to wit:

Answer.

The answer of Thomas P. Devereux, defendant, to the bill of revivor of Grinfill Blake and Elizabeth, his wife, and John Townsend and Georgina, his wife, filed in this honorable court, against this defendant and and Frances A. Polk.

This defendant, for answer to the said bill, saith that he admits the filing of the said original bill, and this defendant's appearance and answer thereto, and the several orders taken in the progress of the said cause, and he believes that the same are correctly stated in the said bill of revivor; but for greater certainty he refers to the original entries in the said cause, and submits to be governed thereby.

This defendant saith that he hath examined the papers on file in this court in the said cause, and cannot detect any loss or deminuation thereof, excepting the answers of Frances A. Polk to certain interrogatories filed in the cause by order of the court, which has in some way disappeared from the files. This defendant hath a copy of the said answers, made out in the handwriting of the said Frances, which he verily believes to be in every respect correct, and he prays for permission either to file the said copy in place of the original or for an order permitting this defendant to have the said Frances examined again upon the interrogatories on file. This defendant fully believes that the loss of the said original answer of the said Frances to the said interrogatories is to be attributed to the state of confusion which has existed throughout the country for the last few years.

This defendant submits to such orders in the premises as the plaintiffs may be entitled to, and which to your honor may seem meet and right.

T. P. DEVEREUX.

Thomas T. Devereux maketh oath that the several matters of fact set forth in the above written answer which are stated as within his own knowledge are true, and the residue he believes to be true.

T. P. DEVEREUX.

Sworn before me.

N. J. RIDDICK, *Clerk.*

JUNE 5TH, 1867.

111 *Order of revivor.*

Whereupon the following proceeding' are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and JOHN TOWNSEND and GEORGINA P. TOWNSEND, his wife, complainants,
against
THOMAS P. DEVEREUX.

Ordered that the cause of Frank G. Q. Umsted and Elizabeth J. D. Umsted, his wife, and Georgina P. Devereux, complainants, against Thomas P. Devereux, Leonidas J. Polk and Frances Ann Polk, his wife, defendants, stand revived in the name of Grinfill Blake and Eliz-

abeth J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants, against Thomas P. Devereux, defendant, and by consent, leave is granted to defendant to file a copy of Mrs. Francis Ann Polk's deposition, now in his possession, to be read at the hearing in evidence for the defendants, and this cause stands for hearing under the former order.

Proceedings at November term, A. D. 1867.

And afterwards, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-seven, and of our Independence the ninety-second year, the same being the twenty-fifth day of said month, came the parties aforesaid, by their attorneys aforesaid, and because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the first Monday in June, A. D. 1868.

Proceedings at June term, A. D. 1868.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty-eight, and of our Independ'ce the ninety-second year, the same being the eighth day of said month, come the parties aforesaid, by their attorneys aforesaid.

Bankruptcy of D'f'd't T. P. Devereux suggested and cause continued.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
THOMAS P. DEVEREUX, DEFENDANT.

The bankruptcy of the defendant, T. P. Devereux, is suggested to
112 the court here, and the appointment of W. J. Hawkins and George W. Mordecai as his assignees in bankruptcy; and thereupon, because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday in November, A. D. 1868.

Proceedings at November term, 1868.

At which last-mentioned day, to wit, at a term of the circuit court of the United States *States* for the district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-eight, and of our Independence the ninety-third year, the same being the thirtieth day of said month, come the parties aforesaid, by their attorneys aforesaid.

W. J. Hawkins & Geo. W. Mordecai, assignees in bankruptcy of T. P. Devereux, made parties def'd't, and cause continued.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and JOHN TOWNSEND and GEORGINA P. TOWNSEND, his wife, complainants,
against
THOMAS P. DEVEREUX, DEFENDANT.

William J. Hawkins and George W. Mordecai, assignees in bankruptcy of the defendant, T. P. Devereux, by leave of the court of bankruptcy, come into court and by consent of all the parties make themselves defendants in this cause.

B. F. MOORE,
Attorney for Assignees.

And thereupon, because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the first Monday in June, A. D. 1869.

Proceedings at June term, A. D. 1869.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, presiding, and the honorable George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third year, the same being the seventh day of said month, come the plaintiffs, Grinfill Blake and Elizabeth J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, by their attorneys aforesaid, and the defendants W. J. Hawkins and George W. Mordecai, assignees in bankruptcy of the defendant T. P. Devereau, by their attorney aforesaid, also come.

113 *Death of T. P. Devereux suggested.*

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,

against

W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of the defendant T. P. Devereux and Thomas P. Devereux, defendants.

The death of Thomas P. Devereux is suggested to the court here, and also the appointment, since said decease, of Richard C. Badger as administrator de bonis non, cum testamento annexo of Frances Devereux, deceased.

Filing of bill of revivor.

And thereupon the said complainants, by their attorneys aforesaid, file in court here their bill of revivor against the said Richard C. Badger, administrator, &c., in the words and figures following, to wit:

Bill of revivor.

In the circuit court of the United States for the fourth circuit and district of North Carolina, in equity, June 5th, 1869.

UNITED STATES OF AMERICA,
District of North Carolina:

To the honorable the judges of the circuit court of the United States, within and for the district of North Carolina:

Grinfill Blake and Elizabeth J. Devereux Blake, his wife, of New York, and citizens of the State of New York, and John Townsend and Georgiana P. Townsend, his wife, of Stratford, and citizens of the State of Connecticut, bring this their bill of revivor against Richard C. Badger, administrator de bonis non, cum testamento annexo of Frances Devereux, deceased, which said Richard is of Raleigh, and a citizen of the State of North Carolina. And thereupon your orators and oratrixes complain and say that on or about the 26th day of March, A. D. 1859, your oratrixes, of whom the first above named was then Elizabeth J. Devereux Umsted, and the other Georgina P. Devereux, by their said names, and together with Frank G. Q. Umsted, the then husband of the said Elizabeth, exhibited their original bill of complaint in this honorable court against Thomas P. Devereux, then a citizen of the State of North Carolina, as the sole surviving executor of Frances Devereux, deceased, and Leonidas Polk, then a citizen of the State of Louisiana, and Frances Ann Polk, his wife, as defendants thereto, thereby stating such several matters and things as

are therein for that purpose more particularly mentioned and set forth, and praying an account of the execution of the will and the administration of the assets of the said Frances Devereux, &c.

That the said defendant, Thomas P. Devereux, being duly served with process of subpœna, appeared, and the said Leonidas Polk and
114 wife Frances, being absent, beyond the jurisdiction of this court, were not served with process, whereupon the cause proceeded against the said Thomas P. Devereux alone, and at June term, 1859, of this court it appearing the said Frank G. Q. Umsted having previously died, such death was suggested, and the cause proceeded in the names of the said Elizabeth and the said Georgina alone; and at the same term the said Thomas P. put in a demurrer to the said bill, which at the same term was set for hearing by consent, and also argued and overruled without costs, and the said defendant Thomas P. ordered to answer; and afterwards the said defendant Thomas P. Devereux put in his answer to the said original bill, as in and by, &c.

That upon the coming in of the said answer, your oratrixes took several exceptions to the same, which exceptions were, upon argument, allowed by the master to whom the same were referred; and thereupon your oratrixes obtained an order of this honorable court to amend their said original bill, which was done, and the said Thomas P. Devereux put in his amended answer thereto; and thereupon your oratrixes filed their replication to such answer, and testimony in said cause was taken by the said Thomas P. Devereux.

That afterwards, to wit, at November term, 1860, of this honorable court, the said cause was set for hearing at the next term thereof, and said next term, because of the late civil war, was not held in June, 1861, as regularly it should have been, nor for several years thereafter; and before any other proceedings were had in the said cause, your oratrixes intermarried, to wit, your oratrix Elizabeth, on or about the 9th day of May, 1866, with your orator Grinfill Blake, and your oratrix Georgina P., on or about the 12th day of June, 1861, with your orator John Townsend, whereby the said cause and proceedings became abated.

That on or about the 13th day of May, 1867, your orators and oratrixes exhibited their bill of revivor in this honorable court against the said Thomas P. Devereux to have the said cause and proceedings which so abated as aforesaid revived, and at June term, 1867, of this honorable court the said Thomas P. Devereux, having been duly served with process of subpœna, appeared and put in his answer to said bill of revivor, whereupon it was ordered and adjudged by this honorable court then and there that the said cause should stand revived and be in the same plight and condition as the same was in at the time of its abatement.

That at June term, 1868, of this honorable court, it appearing that the said Thomas P. Devereux had previously been duly adjudicated a bankrupt, such bankruptcy was suggested, and at a rule day of this honorable court, held in February, 1869, W. G. Hawkins and G. W. Mordecai, assignees in bankruptcy of the said defendant, Thomas P. Devereux, by leave of the court of bankruptcy, came into this court, and by consent of all the parties made themselves parties defendant in this cause.

That afterwards, to wit, on or about the day of , 1869, the said defendant, Thomas P. Devereux, departed this life, by which said de-

cease this cause became abated as to the personal representative of Frances Devereux, deceased.

And afterwards, to wit, on or about the 2nd day of June, 1869, Richard C. Badger, the defendant in this bill of revivor, was by the court of probate of Wake County duly and lawfully appointed and qualified administrator de bonis non, cum testamento annexo of Frances Devereux, deceased, and your orators and oratrixes are advised that they are en-
115 titled to have this cause revived against the said Richard C. Badger, administrator as aforesaid, and put in the same plight and condition, with respect to him as administrator as aforesaid, as the same was in as to Thomas P. Devereux, deceased, as executor as aforesaid at the time of the abatement thereof last aforesaid.

To the end, therefore, that the said cause and proceedings which so became abated as last aforesaid may stand revived and be in the same plight and condition in which the same were at the time of such abatement, or that the said defendant Richard C. Badger may show good cause to the contrary:

May it please your honor to grant unto your orators and oratrixes the most gracious writ of subpœna to revive, issuing out of and under the seal of this honorable court, to be directed to the said Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, thereby commanding him that on a certain day, and under a certain pain, to be therein limited, personally to be and appear before your honors in this honorable court and then and there to show cause, if he can, why the said cause and proceedings therein had should not stand and be revived against him, as administrator as aforesaid, and be in the same plight and condition in respect to him, as administrator as aforesaid, as the same were as to Thomas P. Devereux, deceased, as executor as aforesaid, at the time of the abatement thereof; and, further, to stand to and abide such order and decree in the premises as to your honors shall seem meet.

And your orator and oratrixes shall ever pray, &c.

FOWLE AND BADGER,
PHILLIPS AND BATTLE,
HAYWOOD,
Solicitors.

Service admitted by R. C. Badger, adm'r, &c.

And thereupon the said Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, comes into court here and admits, in writing, service of the foregoing bill, and consents to the revivor therein prayed, which admission and consent are in the words and figures following, to wit:

I do hereby accept service of the within bill, and consent to the revivor therein prayed, June 5th, 1869.

R. C. BADGER,
Administrator de bonis non cum testamento annexo of Frances Devereux.

Cause revived against R. C. Badger, adm'r, &c.

And thereupon the said Richard C. Badger, administrator, &c., is, with the consent of all the parties, made a party defendant herein, and it is ordered that this cause be, and it hereby is, revived as to him as administrator as aforesaid, and that it stand for hearing under the former order.

116 *Hearing of decretal order directing account.*

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend and Geogina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants.

This cause coming on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz, that it be referred to N. J. Riddick, as commissioner, to inquire and take an account of the assets of Frances Devereux, deceased, which came into the hands or under the control of Thomas P. Devereux, deceased, during his life-time, and of what disposition was made by the said Thomas P. of the assets aforesaid, and of what portion thereof remained in his hands unadministered; and also of what portion thereof, if any, was wasted or misapplied by the said Thomas P.

That the said commissioner further inquire and report what portion of the charge of fifty thousand dollars created by the deed of the 3rd of July, 1839, executed by John Devereux and the said Frances Devereux to the said Thomas P. Devereux remained unappointed by the said Frances at the date of her decease, and that he take an account of the manner in which the said fifty thousand dollars, or any part thereof, was appointed by the said Frances during her life-time, and also an account of what disposition was made by the said Thomas P. after the decease of the said Frances of the residue of the said charge of fifty thousand dollars remaining unappointed at the date of her decease.

That the said commissioner further inquire and report what portion of the charge of three thousand dollars per year, during the life of the said Frances, created by the deed of the 3rd of July, 1839, aforesaid, remained unpaid by the said Thomas P. at the date of the decease of the said Frances, and that he take an account of the manner in which the said annual charge of three thousand dollars, and every part thereof, was paid by the said Thomas P., to or for the said Frances during her life-time, and also an account of what disposition was made by the said Thomas P., after the decease of the said Frances, of the residue of the said annual charge of three thousand dollars remaining unpaid at the date of her decease.

And in taking the accounts aforesaid, the said commissioner, after charging the said Thomas P. Devereux with the residue of said fund of fifty thousand dollars remaining unappointed at the decease of the said Fran-

ces, and also with the residue of the said annuity of three thousand dollars remaining unpaid at the decease of the said Frances, shall credit the said Thomas P., in respect of said residues, with all payments made by him towards the satisfaction of all the pecuniary legacies bequeathed in the last will and testament of the said Frances Devereux.

And all other disbursements made by the said Thomas P., in respect of the estate of the said Frances, shall, in taking said accounts, be charged against the general assets of the said Frances Devereux, deceased, which come into the hands of the said Thomas P. Devereux.

117 And all the questions involved in this cause are reserved for consideration, until the coming in of the said accounts and report of the commissioners aforesaid.

Proceedings at the November term, A. D. 1869.

And afterwards, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-fourth year, the same being the twenty-ninth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the first Monday of June, A. D. 1870.

Proceedings at June term, A. D. 1870.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the ninety-fourth year, the same being the sixth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the last Monday of November, A. D. 1870.

Proceedings at November term, A. D. 1870.

At which last-mentioned day, to wit, at a term of the circuit court of the United States, for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the nine-

ty-fifth year, the same being the twenty-eighth day of said month, came the parties aforesaid, by their atto'neys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person.

118 *Appointment of E. F. Page, com'r, in the place of N. J. Riddick, & cause cont'd.*

Whereupon the following proceedings are had in the cause of—

G'INFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard C. Badger, administrator de bonis non cum testamento annexo, of Frances Devereux, deceased, defendants.

In this cause, on motion of E. Graham Haywood, of counsel for complainants, and with the consent of the defendants, signified by their counsel in open court, it is ordered and decreed that the decretal order made in this cause, at June term, A. D. 1869, be altered and amended by striking out the name of N. J. Riddick as commissioner in said decretal order wherever the same occurs, and substituting therefor the name of Erasmus F. Page, esq'r, counsellor at law, as commissioner to take the accounts and make the report ordered and directed in the said decretal order of June term, 1869, and the said E. F. Page is hereby vested with all the authority and powers conferred on N. J. Riddick in the decretal order aforesaid; and he is hereby required in all respects to conform to the directions contained in said decretal order, to take the accounts therein directed, and to report thereon, and what he may have done in the premises, to the next term of this court, and this cause is retained for further orders.

And thereupon, because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the first Monday of June, A. D. 1871.

Proceedings at June term, A. D. 1871.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-fifth year, the same being the fifth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and the defendant, George W. Mordecai.

119 *Death of G. W. Mordecai suggested.—By consent, Walter Clark made party def'd't in his stead, & cause cont'd.*

Whereupon the following proceedings are had in the cause of—

GINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard C. Badger, administrator de bonis non cum testamento annexo, of Frances Devereux, deceased, defendants.

The death of George W. Mordecai, one of the assignees in bankruptcy of Thomas P. Devereux, deceased, is suggested, and the appointment of Walter Clark, of Halifax County, by the court of bankruptcy in his stead, as such assignee, is also suggested to the court; and thereupon the said Walter Clark, joint assignee in bankruptcy of Thomas P. Devereux, with W. J. Hawkins, comes into court, by leave of the court of bankruptcy, and applies to be made a party defendant in this cause, and with the consent of all the parties, plaintiff and defendant, he is made such party defendant accordingly.

BRAGG & MOORE & GATLING,
For Defendants.

HAYWOOD,
Att'y for Plaintiffs.

And thereupon, because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday of November, A. D. 1871.

Proceedings at November term, A. D. 1871.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth year, the same being the twenty-seventh day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the first Monday of June, A. D. 1872.

Proceedings at June term, A. D. 1872.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at
120 the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth year, the same being the third day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday of November, A. D. 1872.

Proceedings at November term, A. D. 1872.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year, the same being the twenty-fifth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are *are* not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the first Monday of June, A. D. 1873.

Proceedings at June term, A. D. 1873.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh year, the same being the second day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant Richard C. Badger, administrator, &c., who comes in his own proper person, and becaus' the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday of November, A. D. 1873.

Proceedings at November term, A. D. 1873.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges sitting in equity, on the last Monday in November, in the year of our Lord
121 one thousand eight hundred and seventy-three, and of our Independence the ninety-eighth year, the same being the twenty-fourth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant Richard C. Badger, administrator, &c., who comes in his own proper person.

Report of Mr. Commissioner Page.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND WALTER CLARK, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard P. Badger, administrator de bonis non, cum testamento annexo of Frances Devereux, deceased, defendants.

Mr. Commissioner Page comes into court and files his report, and all the evidence and exhibits accompanying the same, in the words and figures following, to wit:

Report.

RALEIGH, *December 5th*, 1873.

To the honorable judges of said court:

Under a decretal order, made at June term, 1869, which order is filed with the court papers in this cause, marked "Decretal order, June term, 1869," which above order was amended at November term, 1870, by "an order appointing new commissioner," November term, 1870 (which order is marked as referred to), the commissioner proceeded, at his office, in the city of Raleigh, at various dates between the 20th day of October, 1873, and the 5th day of December, of the same year, to take evidence, hear the arguments of counsel, and state the accounts ordered in said decretal orders, herein referred to, and, in the opinion of Chief-Justice Chase, made at said term, which latter is filed with the court papers in the case, marked "M M," all parties to said suit were present, either in person or by counsel.

The commissioner finds—

I. That there is due the estate of Mrs. Frances Devereux, by Thomas P. Devereux, as a charge on all the lands of said Thomas P. Devereux,

as per deed of settlement of July 3rd, 1839 (filed as part of original bill, and marked therein "A"), and as per accounts A B, and balance sheet of said accounts, marked "Account E," the sum of ninety-two thousand four hundred and thirty-eight and $\frac{72}{100}$ dollars ($92,438.72).

II. That there is due by the said Thomas P. Devereux to the estate of Mrs. Frances Devereux, on account of the administration account of said estate, as per accounts D and F, and balance sheet of said accounts, marked "Account G," the additional sum of forty-one thousand six hundred and thirty-three dollars ($41,633.00).

The evidence taken by the commissioner during the progress of the cause is filed with this report, and marked "Depositions of W. D. Cooke," "Depositions of John Devereux, Nos. 1 and 2," and "Depositions
122 of John N. Bunting," and are paged, so that a correct reference can be had to each and every statement therein contained.

The exhibits filed in the cause are collected together in two paper wrappers, the first of which is marked "Exhibits filed prior to appointment of commissioner;" the second, "Exhibits filed before commissioner." Both are enclosed in a paper wrapper, marked "Exhibits filed in the cause."

The findings of law and fact by the commissioner in this cause, and the reasons influencing him in each and every instance, are herewith given at the request of counsel, in order that they may the more readily file their exceptions to certain rulings herein made by said commissioner.

I. The defendants contended that the $3,000 annuity, as per deed of settlement of July 3rd, 1839, was to be considered merely as interest on the $50,000 fund charged by said deed, and that the proper mode of stating this account on the credit side of Mrs. Frances Devereux, on account of the above-named charges, would be to start the account on the 1st March, 1840, with the charge of $50,000, and $3,000 as interest thereon, said principal & interest being diminished in each and every year by the expenditures of Thomas P. Devereux on account of Mrs. Frances Devereux, until the date of the death of Mrs. Frances Devereux, on the 3rd June, 1849.

The commissioner, after carefully considering the first and third items in the deed of settlement of July 3rd, 1839, marked "A," and appended to the original bill as a part thereof, decided that such was not the true construction and meaning of said first and third items, and ruled and so stated the account that the above items were separate and distinct charges upon the lands of Thomas P. Devereux, the annuity to be considered as intended for the annual expenses of Mrs. Frances Devereux, and the fund of $50,000 to be appointed at her own discretion; a final appointment of which sum was made by her, in the opinion of the commissioner, in the established will of Mrs. F. Devereux, which will is filed as part of the original bill, and marked "B." The plaintiffs also excepted to commissioner's mode of stating the account, for the reasons contained in the first exception filed by them.

II. The defendants then submitted to the commissioner a paper writing, admitted by both plaintiffs and defendants to have been signed by Mrs. F. Devereux, purporting to be a deed of explanation from said Frances Devereux "to all whom it may concern," and acknowledging the true construction and intention of the deed of settlement of July 3rd, 1839, to be

in accordance with the first proposition herein stated, as contended for by the defendants. The said paper writing is herewith filed, and marked "Exhibit X." The commissioner ruled—

1st. That said paper, being made to no person, being very indefinite, and being obtained by a trustee from his cestui que trust, could not be considered by the commissioner, in stating this account, as barring Mrs. Frances Devereux, or her legal representatives, from the advantage of a legal decision as to the construction of the deed of settlement of July 3rd, 1839.

2nd. That the decretal order of June term, 1869, heretofore referred to, and the opinion of the late Chief Justice Chase required the commissioner to take an account from the beginning of the trusteeship of Thomas P. Devereux.

III. The counsel for defendants then offered, as sufficient evidence
123 of an account stated and settled between Mrs. Frances Devereux and Thomas P. Devereux, up to the 21st June, 1846, a paper writing signed by Mrs. Frances Devereux, the body of which paper writing is admitted to be in the handwriting of Thomas P. Devereux, purporting to be a statement made by Mrs. Frances Devereux that S. W. Whiting had gone over the accounts between herself and son, Thomas P. Devereux, and found them correct, &c., as per the said paper writing, which is herewith filed among the exhibits in the cause, and marked "Exhibit E E."

On this point the commissioner ruled that the relationship of trustee and cestui qui trust, being in existence between said Frances Devereux and Thomas P. Devereux, and S. W. Whiting being merely the agent of Thomas P. Devereux, and there being no evidence offered before the commissioner of Mrs. Devereux's knowing fully the contents and meaning of said paper offered for her signature by her trustee, or that she was properly advised of the legal effects of the same, or that any evidence was offered to satisfy her of the correctness and fairness of said matters of account therein stated, that therefore he could not receive the said paper writing as full and sufficient evidence of an account stated and settled between parties up to the 21st June, 1846.

IV. The counsel for defendants then offered an account stated by William D. Cooke, between Thomas P. Devereux and Mrs. Frances Devereux, up to June 21st, 1847 (which account is herewith filed as an exhibit, marked "B B"), as full and sufficient evidence to show that the account ordered to be stated by this commissioner should begin at that date, and that said paper writing, with its balance found, should constitute the basis of his account, to be stated in this cause.

The commissioner ruled that upon the evidence of William D. Cooke (which is herewith filed, marked "Depositions of William D. Cooke"), page 1st of which evidence relates to the above account stated, that he, the commissioner, was not satisfied that the said paper writing marked "B B" was a full, correct, and fair account to be taken by him as a starting-point for his account, beyond which point he could not go.

V. The defendants then offered a copy of a certain paper writing, purporting to be signed by Thomas P. Devereux and Frances Devereux as an agreement and settlement of certain matters in dispute between them.

The evidence of W. D. Cooke, in his depositions heretofore alluded to, concerning the mode in which said agreement was made, and the opinion of

the commissioner heretofore fully formed from the evidence and the law before him, that Thomas P. Devereux was the trustee of Mrs. Frances Devereux until the date of her death, determined the commissioner to disregard the copy of said paper writing, a copy of which is herewith filed as an exhibit and marked "D D."

A power of attorney is also filed as an exhibit, marked "C C," from Mrs. Frances Devereux to William D. Cooke, a perusal of which the commissioner most respectfully submits might be of use to the court.

VI. The defendants then submitted, as full evidence of items of charge and discharge between said Frances Devereux and her son, Thomas P. Devereux, a certain book containing certain entries, marked "Ledger," which was proven by John Devereux, in his "Depositions No. 1," pages 1, 2, and 3, to have been kept by himself as agent for his father, all of which will more fully appear by reference to said depositions.

The counsel on both sides considering this a most important point in the course of this suit, requested commissioner to give his opinion in writing, which the commissioner did, and the same is herewith filed as
124 a part of this report, marked "Opinion of referee, No. 1," in which all the points of law and fact raised by plaintiffs and defendants are, to the best of the knowledge of this commissioner, fully set forth.

The commissioner ruled out the said book as "satisfactory evidence of matters of charge and discharge" claimed by the defendants' counsel as therein contained, but allowed the witness for defendants, John Devereux, to refresh his memory in regard to all the items therein contained from said book, and in case of each and every item which the commissioner deemed satisfactor'y proven he allowed the same.

Upon the rulings heretofore mentioned and upon the evidence, and (as the commissioner thinks) the law and equity of this case, he proceeded to take the accounts ordered in this case, as follows, viz:

First. Account A contains all the charges to be made against Thomas P. Devereux on account of the $3,000 annuity, as per deed of settlement of July 3rd, 1839, and as per account submitted by defendants, marked "L L," together with the vouchers to sustain said account, with interest calculated on each item to the date of the death of Mrs. Frances Devereux, on the 3rd day of June, 1849.

Second. Account B contains all items of charge made by Thomas P. Devereux against Mrs. Frances Devereux, which are either proven to the satisfaction of the commissioner or admitted by counsel for plaintiffs; a reference is made in said accounts to the sources of information upon which said account is based; all items of charge allowed since the 21st day of June, 1846, being proven by account and vouchers, which are herewith filed, marked "L L."

1. Under this account there were claimed by defendants two items of charge, as follows:

"To amount due by you to executors of John Devereux, deceased, $1,772.65."

"To your ½ of stock, valued by George W. Mordecai, $1,684.

Evidence regarding these items was taken by defendants, which evidence is contained in the "Depositions of John Devereux, No. 2," pages 21 and 22, and in the "Depositions of John N. Bunting," and in a paper writing filed as an exhibit, marked "F F"; but the commissioner, deem-

ing said evidence insufficient to establish these claims, declined to allow the said charges.

2. There was also claimed by defendants charges, at various dates and of various amounts, paid to Mrs. C. E. Fuller by Thomas P. Devereux, on account of his mother. The evidence on these charges will be found on page 23 of John Devereux's deposition No. 2, and in vouchers filed with account L L. The commissioner deeming the evidence on these points and charges sufficient, allowed the same; to which allowance the plaintiffs excepted.

3. The defendants claimed certain amounts at various dates as annuities paid by Thomas P. Devereux on his mother's account to Miss Ogden. The evidence thereon will be found on pages 22 and 23 of the "Depositions of John Devereux, No. 2," and in a certain paper writing heretofore filed, marked "D D." The commissioner disallowed said charges.

Third. Account C contains an account of the pecuniary legacies left by the will of Mrs. F. Devereux, with interest calculated on each and every payment of said legacies by Thomas P. Devereux from date of payment of the same to date of the bankruptcy of said T. P. Devereux, May 30th, 1868.

Fourth. Account E is a balance sheet of the above accounts,
125 showing the balance due at the death of Mrs. F. Devereux by Thomas P. Devereux, as a charge on all his lands, on account of the $50,000 fund, the $3,000 annuity, and interest calculated on said balance to the date of the bankruptcy of Thomas P. Devereux, May 30th, 1868, the amount of pecuniary legacies under the will of Mrs. Frances Devereux being deducted therefrom, as ordered by decretal order of June term, 1869, and ascertained by account C.

Fifth. Account D is an account of the general administration of Mrs. Frances Devereux's estate after her death, exclusive of the charge on lands heretofore ascertained by Thomas P. Devereux, or his agent, S. W. Whiting; that is, of the credit side of the estate, viz, the amount received by said T. P. Devereux, or his agent, Whiting, on account of said estate, as per account and vouchers filed by defendants, and marked "H H."

Sixth. Account F is the debit side of the estate of Mrs. Frances Devereux, on account of the administration of the same by Thomas P. Devereux and S. W. Whiting, as per account and vouchers marked "H. H."

Seventh. Account G is the balance-sheet of said accounts D and F.

To various of the above rulings, and of the statements of account made by your commissioner, both plaintiffs and defendants excepted, in the presence of commissioner and at the time when said exceptions arose. The exceptions of plaintiffs are herewith filed by the said plaintiffs, and said exceptions are numbered, and clearly set forth the portions of the report to which the plaintiffs except, and the reasons therefor, and are marked "Exceptions of plaintiffs to report of commissioner." The exceptions of defendants are also filed in like manner, and are marked "Exceptions of defendants to report of commissioner."

All of which is most respectfully submitted to the honorable court.

ERASMUS F. PAGE,
Commissioner.

Account A, with report of commissioner.

Receipts of Thomas P. Devereux on account of $3,000 annuity.

THOMAS P. DEVEREUX, ESQ'R, IN ACC'T WITH MRS. FRANCES DEVEREUX.

1840.				
Mar. 1st	To amount of annuity charged on the lands of T. P. Devereux, as per deed of settlement of July 3rd, 1839, appended to the "original bill" in this suit, and marked "A".....		$3,000	
	" interest on the above amount to 3rd June, 1849, date of the death of Mrs. Frances Devereux, as follows, viz:			
	9 years.....	$1,620		
	3 months.....	45		
	3 days.....	1 50		
			1,666 50	
1841.				
Mar. 1st	" amount of annuity as above charged.....		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	8 years.....	$1,440		
	3 months.....	45		
	3 days.....	1 50		
			1,486 50	
1842.				
Mar. 1	" amount of annuity, as above charged.....		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	7 years.....	$1,260		
	3 months.....	45		
	3 days.....	1 50		
			1,306 50	
126				
1843.				
Mar. 1	To amount of annuity as above charged.....		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	6 years.....	$1,080		
	3 months.....	45		
	3 days.....	1 50		
			1,126 50	
" "	" amount carried forward.....			$17,586 00
1844.				
Mar. 1	To amount brought forward.....			$17,586 00
" "	" " of annuity as heretofore charged...		$3,000	
	" interest on same to 3rd June, 1849, as follows:			
	5 years.....	$900		
	3 months.....	45		
	3 days.....	1 50		
			946 50	
1845.				
Mar. 1	" amount of annuity as heretofore charged....		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	4 years.....	$720		
	3 months.....	45		
	3 days.....	1 50		
			766 50	
1846.				
Mar. 1	" amount of annuities as heretofore charged..		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	3 years.....	$540		
	3 months.....	45		
	3 days.....	1 50		
			586 50	

Account A—Continued.

June 21	" amount received by T. P. D., from John Devereux, on account of proceeds of crop of 1845		2,256 74	
	" interest on same to 3rd June, 1849, as follows:			
	3 years	$408 06		
	11 months	124 69		
	13 days	4 92		
			537 67	
" "	" amount received for crop 1846		120 95	
" "	" interest on same to 3rd June, 1849, as follows:			
	3 years	$21 60		
	11 months	6 60		
	13 days	26		
			28 46	
				14,243 32
" "	" amount carried forward			$31,829 32
1846.				
June 24	To amount brought forward			$31,829 32
" "	" " due Mrs. Devereux on account of the estate of J. Devereux		$91 75	
	" interest to 3rd June, 1849, as follows:			
	3 years	$16 56		
	11 months	5 06		
	13 days	20		
			21 82	
1847.				
Mar. 1	" amount of annuity due this day, as heretofore charged		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	2 years	$360		
	3 months	45		
	3 days	1 50		
			406 50	
127				
1848.				
Mar. 1	" amount of annuity due this day, as heretofore charged		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	1 year	$180		
	3 months	45		
	3 days	1 50		
			226 50	
1849.				
Mar. 1	" amount of annuity due this day, as heretofore charged		3,000	
	" interest on same to 3rd June, 1849, as follows:			
	3 months	$45		
	3 days	1 50		
			46 50	
				9,793 07
June 3	" Total balance due by T. P. Devereux to Mrs. Frances Devereux on account of annuity, interest thereon, and certain other accounts as herein specified, which amount of balance is carried forward to general balance sheet, marked "E"			$41,622 39

Account B, with report of commissioner.

Expenditures of T. P. Devereux out of $3,000 annuity.

Mrs. Frances Devereux in account with Thomas P. Devereux.

1839.				
July 19	To amount of receipts given to T. P. Devereux, as per page turned down of account-book of T. P. D., marked "50," and filed with papers		$1,075 00	
	" interest on same to 3rd June, 1849 (date of Mrs. D.'s death)		636 88	
Nov. 29	" cash expended by T. P. D. for Mrs. F. D., as per list this day furnished her		308 65	
" "	" interest, as on last entry		177 86	
1841.				
April 15	" cash paid for Booker, on account of Mrs. F. Devereux		1,000 00	
	" interest to 3rd June, 1849		483 00	
May 15	" cash paid Mrs. D., per John		150 00	
	" interest to 3rd June, 1849		72 41	
1842.				
April 15	" bond given to Mrs. S. E. Devereux by Thomas P. Devereux, by Mrs. Frances Devereux's direction		5,000 00	
	" interest to 3rd June, 1849		2,141 15	
1843.				
July 9	" cash at this date		250 00	
	" interest to 3rd June, 1849		88 52	
Sept'r 11	" cash at this date		45 00	
	" interest to 3rd June, 1849		15 47	
Oct 17	" cash at this date		25 00	
	" interest as above		8 45	
Nov. 20	" cash		150 00	
	" interest		49 84	
	" amount carried forward			$11,675 23
128				
1844.				
	To amount brought forward			$11,675 23
Jan. 1	" cash to Mrs. Devereux		$100 00	
	" interest		32 55	
" 30	" cash to Mrs. Devereux		150 00	
" "	" interest		48 12	
Mar. 8	" cash " "		500 00	
" "	" interest		187 50	
1846.				
June 23	" cash " "		50 00	
" "	" interest		8 86	
" 24	" cash to Mrs. Parmelee		100 00	
" "	" interest		17 72	
" 30	" cash to Mrs. Devereux		285 00	
" "	" interest		50 02	
July 6	" cash " "		170 00	
" "	" interest		29 75	
" 10	" cash " "		50 00	
" "	" interest " "		8 42	
" 13	" M. B. Royster's note of Mrs. D's		887 14	
" "	" interest		152 99	
" 17	" cash to Mrs. Devereux		106 00	
" "	" interest		18 25	
" 25	" cash " "		52 30	
" "	" interest		8 56	
Aug. 1	" cash " "		15 00	

Account B—Continued.

"	"	" interest	2 56	
"	11	" cash " "	32 00	
"	"	" interest	5 12	
"	24	" cash " "	16 00	
"	"	" interest	2 58	
Sept.	4	" cash " "	10 00	
"	"	" interest	1 70	
				3,088 14
		" amount carried forward		$14,763 37
1846.				
		To amount brought forward		$14,763 37
Sept.	8	To cash	30 00	
"	"	" interest	5 10	
"	14	" cash	15 00	
"	"	" interest	2 48	
"	22	" cash	50 00	
"	"	" interest	8 06	
"	29	" cash	15 00	
"	"	" interest	2 38	
Oct.	17	" cash	15 00	
"	"	" interest	2 09	
"	29	" William Stronach's note	500 00	
"	"	" interest	76 84	
"	15	" cash paid W. D. Cooke	50 00	
"	"	" interest	8 05	
"	"	" cash	30 00	
"	"	" interest	4 74	
"	19	" William Pierce's note	747 13	
"	"	" interest	72 80	
"	29	" cash to W. D. Cooke	50 00	
"	"	" interest	7 79	
Nov.	17	" cash to W. D. Cooke	50 00	
"	"	" interest	7 54	
"	28	" cash to W. Cooke	150 00	
"	"	" interest	22 43	
129				
Dec.	7	To cash to W. D. Cooke	100 00	
"	"	" interest	13 82	
"	18	" cash " "	50 00	
"	"	" interest	7 37	
"	26	" cash " "	150 00	
"	"	" interest	21 73	
				2,265 35
		" amount carried forward		$17,028 72
1847.				
		To amount brought forward		$17,028 72
Feb'y	4	" cash to W. D. Cooke	$430 00	
"	"	" interest	50 32	
"	"	" cash " "	100 00	
"	"	" interest	14 10	
"	19	" cash " "	150 00	
"	"	" interest	20 82	
Mar.	13	" cash " "	100 00	
"	"	" interest	13 35	
"	22	" cash " "	150 00	
"	"	" interest	20 07	
April	12	" cash " "	275 00	
"	"	" interest	35 37	
"	24	" cash " "	25 00	
"	"	" interest	3 14	

Account B—Continued.

"	30	" cash " " "	100 00	
"	"	" interest	12 54	
May	21	" cash " " "	100 00	
"	"	" interest	12 13	
"	22	" cash " " "	231 00	
"	"	" interest	28 25	
"	25	" cash " " "	200 00	
"	"	" interest	24 23	
June	7	" cash on Wm. Pearce's note	817 85	
"	"	" interest	88 92	
"	8	" cash paid W. D. Cooke	200 00	
"	"	" interest	23 67	
				3,225 96
"	"	" amount carried forward		$20,254 68
1847.				
June	22	To amount brought forward		$20,254 68
"	"	" balance paid W. Pearce	$11 33	
"	"	" interest	1 44	
Sept.	2	" Laurens Hinton's note	522 80	
"	"	" interest	54 87	
July	26	" cash to W. D. Cooke	100 00	
"	"	" interest	12 13	
Aug.	12	" cash " " "	50 00	
"	"	" interest	5 43	
"	17	" cash " " "	75 00	
"	"	" interest	7 71	
"	28	" cash " " "	50 00	
"	"	" interest	5 18	
Sept.	2	" cash " " "	200 00	
"	"	" interest	20 32	
Oct.	5	" cash " " "	75 00	
"	"	" interest	7 50	
"	11	" cash " " "	100 00	
"	"	" interest	9 88	
130				
Oct.	23	To cash to W. D. Cooke	75 00	
"	"	" interest	7 27	
"	26	" cash, " " "	175 00	
"	"	" interest	16 86	
"	"	" cash for cheeses	8 30	
"	"	" interest	77	
Nov.	9	" cash to Mrs. Devereux	100 00	
"	"	" interest	9 42	
"	12	" cash paid W. H. Haywood, jr	200 00	
"	"	" interest	18 73	
"	13	" cash paid G. D. Lander, note	213 33	
"	"	" interest	19 93	
				2,153 20
"	"	" amount carried forward		$22,407 88
1847.				
		To amount brought forward		$22,407 88
Nov.	13	" James D. Winnis' note	$1,071 27	
"	"	" interest	99 54	
"	20	" cash to W. D. Cooke	60 00	
"	"	" int.	5 54	
"	23	" cash " " "	50 00	
"	"	" interest	4 59	
"	24	" cash to E. Colburn	13 33	
"	"	" interest	1 21	
"	29	" cash to W. D. Cooke	150 00	
"	"	" interest	10 45	

Account B—Continued.

Dec.	24	" cash to W. D. Cooke	150 00	
"	"	" interest	13 00	
"	29	" cash " " "	150 00	
"	"	" interest	12 88	
1848.				
Jan.	4	" cash " " "	200 00	
"	"	" interest	16 97	
"	11	" cash " " "	100 00	
"	"	" interest	8 38	
"	15	" cash to Mrs. C. E. Fuller	50 00	
"	"	" interest	4 19	
"	25	" cash to W. D. Cooke	100 00	
"	"	" interest	8 15	
"	28	" cash " " "	50 00	
"	"	" interest	4 06	
Feb'y	1	" cash " " "	40 00	
"	"	" interest	3 21	
"	5	" cash " " "	50 00	
"	"	" interest	3 98	
"	11	" cash " " "	75 00	
"	"	" interest	5 91	
				2,476 66
		" amount carried forward		$24,884 54
1848.				
		To amount brought forward		$24,884 54
Feb'y	14	" cash to H. D. Cooke	$40 00	
"	"	" interest	3 13	
"	22	" cash " " "	150 00	
"	"	" interest	11 53	
"	26	" cash " " "	50 00	
"	"	" interest	3 81	
Mar.	15	" cash " " "	100 00	
"	"	" interest	7 32	
131				
Mar.	18	To cash to H. D. Cooke	200 00	
"	"	" interest	14 53	
"	20	" cash " " "	200 00	
"	"	" interest	14 46	
"	22	" cash " " "	200 00	
"	"	" interest	14 39	
"	27	" cash " " "	100 00	
"	"	" interest	7 12	
April	1	" cash " " "	50 00	
"	"	" interest	3 53	
"	17	" cash " " "	125 00	
"	"	" interest	8 48	
"	22	" cash " " "	500 00	
"	"	" interest	33 50	
"	26	" cash " " "	150 00	
"	"	" interest	9 95	
May	1	" cash " " "	450 00	
"	"	" interest	29 48	
"	13	" cash " " "	150 00	
"	"	" interest	9 53	
June	10	" cash to Rev. Mr. Cassidy	100 00	
"	"	" interest	5 88	
				2,742 64
		" amount carried forward		$27,627 1

Account B—Continued.

1848.		To amount brought forward		$27,627 18
June	20	" D. L. Swain	$4 60	
"	"	" interest	24	
"	22	" cash to Mrs. Fuller	50 00	
"	"	" interest	2 84	
"	"	" cash to W. D. Cooke	150 00	
"	"	" interest	8 50	
July	5	" cash to Mrs. Fuller	15 00	
"	"	" interest	72	
"	10	" cash to Drury Lacy	75 00	
"	"	" interest	4 31	
"	13	" cash to Mrs. Fuller	15 00	
"	"	" interest	69	
"	"	" cash for meal	6 00	
"	"	" interest	32	
"	15	" cash to W. D. Cooke	177 33	
"	"	" interest	9 42	
"	21	" cash to Turell, Johnston and T	12 28	
"	"	" interest	72	
"	31	" cash paid Mrs. Fuller	30 00	
"	"	" interest	1 50	
Aug.	2	" cash to W. D. Cooke	5 00	
"	"	" interest	25	
"	7	" cash to Mrs. Fuller	50 00	
"	"	" interest	2 39	
"	21	" cash to " "	25 00	
"	"	" interest	1 17	
"	28	" cash to W. D. Haywood	9 50	
"	"	" interest	48	
Sept.	1	" cash to Mrs. Fuller	25 00	
"	"	" interest	1 03	
				683 07
		" amount carried forward		$28,310 25
1848.		To amount brought forward		$28,310 25
Sept.	7	" cash paid J. Primrose	$158 38	
132				
Sept.	7	To interest	7 03	
"	15	" cash to E. P. Jones	1 75	
"	"	" interest	07	
"	"	" cash to Mrs. Fuller	25 00	
"	"	" interest	82	
"	"	" cash for groceries	71 29	
"	"	" interest	3 05	
Oct.	1	" cash to Mrs. Fuller	25 00	
"	"	" interest	71	
"	3	" cash to T. H. Briggs	137 75	
"	"	" interest	5 48	
"	9	" Cash to Chavis	2 08	
"	"	" interest	06	
"	"	" cash to Wattering	13 43	
"	"	" interest	46	
"	"	" bill on New York	11 00	
"	"	" interest	33	
"	13	" cash to J. M. Towles	25 00	
"	"	" interest	88	
"	7	" Rev. Mr. Lacy	50 00	
		" interest	1 76	
"	16	" cash paid Mrs. Fuller	80 00	
"	"	" interest	3 04	
"	"	" cash to Mrs. Fuller	25 00	

Account B.—Continued.

"	"	" interest	85	
Nov.	13	" cash to Mrs. Fuller	50 00	
"	"	" interest	1 68	
Dec.	1	" cash " "	50 00	
"	"	" interest	1 53	
"	"	" cash " "	50 00	
"	"	" interest	1 53	
				804 96
		" amount carried forward		$29,115 21
1849.				
		To amount brought forward		$29,115 21
Jan'y	1	" cash to Mrs. Fuller	$50 00	
"	"	" interest	1 28	
"	"	" cash " " "	80 00	
"	"	" interest	1 71	
"	"	" cash for taxes	13 36	
"	"	" interest	26	
"	26	" cash to Brown & Hinton	32 00	
"	"	" interest	64	
"	"	" J. M. Towles	50 68	
"	"	" interest	1 00	
"	27	" cash to Jesse Brown	24 54	
"	"	" interest	36	
"	30	" cash to Mrs. Fuller	50 00	
"	"	" interest	98	
Feb'y	15	" cash " " "	50 00	
"	"	" interest	88	
Mar.	1	" cash " " "	50 00	
"	"	" interest	75	
"	15	" cash " " "	50 00	
"	"	" interest	63	
"	10	" box of wine	25 00	
"	"	" interest	31	
"	30	" cash to Mrs. Fuller	50 00	
"	"	" interest	56	
April	7	" cash to C. F. Haight & Sons	24 47	
"	"	" interest	26	
"	9	" Drury Lacy	50 00	
"	"	" interest	43	
133				
April	15	To Mrs. Fuller (cash)	50 00	
"	"	" interest	40	
				660 50
		" amount carried forward		$29,775 71
1849.				
		To amount brought forward		$29,775 71
April	25	" cash to E. Colburn	$84 00	
"	"	" interest	53	
May	1	" cash to Mrs. Fuller	50 00	
"	"	" interest	28	
"	15	" cash " " "	50 00	
"	"	" interest	15	
June	3	" cash to E. Colburn	9 25	
				$194 21
				$29,969 92

Account E, with report of commissioner.

Balance-sheet of accounts A and B.

Mrs. Frances Devereux, in account with Thomas P. Devereux, on account of $50,000, charge on land, $3,000, annuity, and other charges prior to this date; expenditures on her account by T. P. D., and interest on balance due by T. P. D. to date of his bankruptcy, as per this account.

			Dr.	Cr.
1849.				
June 3	By amount due by Thomas P. Devereux, on ⅗ of $3,000, annuity, int., and other charges, as per ⅗ A			$41,622 39
" "	To amount expended by T. P. Devereux, on account of Mrs. Frances Devereux, as per account B		$29,969 92	
" "	By amount of charge on land in gross, as per deed of settlement of July 3rd, 1839, this day appointed by the will of Mrs. Frances Devereux			50,000 00
" "	To amount to balance		61,652 47	
			91,622 39	91,622 39
" "	By amount of above balance brought down			61,652 47
1868.				
May 30	" interest on said am't to the date of T. P. Devereux's bankruptcy, as follows:			
	18 years	$66,584 88		
	11 months	3,390 86		
	27 days	277 09		
				70,252 83
" "	" total amount of charge on land due this day, and interest			131,905 30
" "	To am't of pecuniary legacies and int., to be charged against this fund, as per decretal order of June 5, 1869, and ⅗ C			39,466 58
	By total balance due this day, as a charge on lands of T. P. Devereux			$92,438 72

134 *Account D, with report of commissioner.*

Amounts received by T. P. Devereux as executor of Mrs. Frances Devereux.

Estate of Mrs. Frances Devereux in account with S. W. Whiting, agent of Thomas P. Devereux, administrator of Mrs. Frances Devereux.

CREDIT ACCOUNT.

1849.				
June 3	By amount of cash received from John Devereux, crop of 1848			$1,139 00
" "	" interest on same from date to 31st May, 1868:			
	18 years	$546 72		
	11 months	62 55		
	27 days	5 13		
			614 50	
" "	" sale of house		45 00	

Account D—Continued.

"	"	" interest:			
		18 years	$48 80		
		11 months	2 48		
		27 days	20		
				51 28	
"	"	" sale of cow		10 50	
		18 years	10 80		
		11 months	55		
		27 days	05		
				11 40	
1850.					
June	3	" hire of Tom and Viney		75 00	
"	"	" interest:			
		17 years	$76 50		
		11 months	4 13		
		27 days	34		
				80 97	
"	"	" sale of bacon		40 81	
"	"	" interest:			
		17 years	$40 80		
		11 months	2 20		
		27 days	18		
				43 18	
"	"	" hire of Delia		13 00	
"	"	" interest:			
		17 years	$13 26		
		11 months	72		
		27 days	06		
				14 04	
"	"	" amount carried forward			$2,138 68
1850.					
June	3	By amount brought forward			$2,138 68
"	"	" " cash paid by J. Devereux for rent of land and purchase of stock		2,840 78	
		" interest on same:			
		17 years	$2,896 80		
		11 months	156 20		
		27 days	12 78		
				3,065 78	
"	"	" hire of negroes		83 75	
"	"	" interest:	25 49		
		17 years	$84 66		
		11 months	4 57		
		27 days	37		
				89 50	
"	"	" hire of Delia		25 00	
"	"	" interest as above		26 99	
135					
1851.					
June	3	By hire of Delia		25 00	
		" interest as above		25 49	
1852.					
June	3	" hire of negroes to J. Devereux		150 00	
"	"	" interest as above, viz:			
		15 years	$135 00		
		11 months	8 25		
		27 days	68		
				143 93	
"	"	" hire of Tom and Viney		80 00	
"	"	" interest:			
		15 years	$72 00		
		11 months	4 40		
		27 days	36		
				76 76	

Account D—Continued.

"	"	" hire of negroes to J. Devereux		150 00	
"	"	" interest:			
		15 years	$135 00		
		11 months	8 25		
		29 days	68		
				143 93	6,926 91
"	"	" amount carried forward			$9,065 59
1852.					
June	3	By amount brought forward			$9,065 59
"	"	" hire of Tom and Viney		$75 00	
"	"	" interest:			
		15 years	$67 50		
		11 months	4 12		
		27 days	34		
				71 96	
"	"	" hire of Delia		27 00	
"	"	" interest charged as above		25 91	
Oct.	13	" amount of valuation of negroes, made by J. Devereux and Kenneth Rayner, which paper is filed by defendants as an exhibit, and marked "P. P."		19,991 00	
"	"	" interest on above amount as follows:			
		15 years	$17,991 90		
		6 months	599 73		
		17 days	55 51		
				18,647 14	
1853.					
June	3	" sale of Delia to James McKimmon		650 00	
"	"	" interest:			
		14 years	$546 00		
		6 months	19 50		
		17 days	1 84		
				567 34	
"	"	" sale of Sally Ann to S. W. Whiting		500 00	
"	"	" interest:			
		14 years	$420 00		
		6 months	15 00		
		17 days	1 42		
				436 42	40,991 77
		Total amount carried to balance sheet, marked account "G."			$50,057 36

136 *Account F, with report of commissioner.*

Disbursements of T. P. Devereux as executor of Frances Devereux.

Estate of Mrs. Frances Devereux in ac. with S. W. Whiting, agent for Thomas P. Devereux, adm'r of Mrs. Frances Devereux.

DEBIT ACCOUNT.

1849.				
June	18	To am't paid Thomas Card		$2 50
		" interest to May 30th, 1868		2 64
"	28	" cash paid Mrs. Fuller		65 00
"	"	" interest		69 91
July	7	" cash paid Perry		34 60
"	"	" interest		36 51

Account F—Continued.

Aug.	15	" cash to E. Colburn	200 00	
"		" interest	213 50	
"	29	" cash to W. Thompson	35 35	
"		" interest	36 26	
"	27	" cash to John King	10 00	
"	"	" interest	10 60	
"	30	" cash to W. Thompson	7 50	
"	"	" interest	7 97	
Sept.	1	" cash to J. Waltering	12 89	
"	"	" interest	13 50	
"	3	" cash to J. Primrose	82 78	
"	"	" interest	90 25	
"	8	" cash to Jesse Brown	17 36	
"	"	" interest	19 10	
"	"	" cash to H. J. Patterson	25 00	
"	"	" interest	28 09	
"	13	" cash to J. Waltering	26 27	
"	"	" interest	27 15	
1850.				
Jan'y	5	" cash to K. Jones	40 32	
"	"	" interest	41 77	
Feb'y	8	" cash to E. Smith	14 89	
"	"	" interest	14 54	
"	11	" cash to J. M. Towles	34 05	
"	"	" interest	35 60	
"	12	" cash to W. Stronade	181 81	
"	"	" interest	187 88	
"	"	Amount carried forward		$1,625 59
1850.				
		To amount brought forward		$1,625 59
Feb'y	28	" cash to J. R. Harrison	$4 50	
"	"	" interest	4 67	
"	24	" cash to Williams & Haywood	54 32	
"	"	" interest	56 89	
"	29	" cash to P. Ward Davis	1 81	
"	"	" interest	2 04	
"	31	" pastor's salary	50 00	
"	"	" interest	52 75	
"	"	" cash to Crocker & Dudley	2 50	
"	"	" interest	2 88	
Mar.	1	" cash to W. J. Clarke	33 57	
"	"	" interest	34 16	
"	"	" cash for copying will	25 00	
"	"	" interest	25 88	
Aug.	21	" cash paid Mrs. Hall	2 00	
"	"	" interest	2 27	
137				
Dec.	24	To cash paid J. McKimmon	18 00	
		" interest	18 60	
1851.				
Jan'y	23	" cash to B. T. Blake	10 00	
"	"	" interest	10 41	
Feb'y	10	" cash W. Putnay	17 28	
"	"	" interest	17 65	
"	25	" cash to Williams & Haywood	2 75	
"	"	" interest	2 83	
June	21	" taxes	8 10	
"	"	" interest	8 32	
Aug.	1	" cash to Dr. Johnson	15 00	
"	"	" interest	14 25	
"	15	" cash to Dr. Haywood	617 00	
"	"	" interest	621 63	

Account F—Continued.

"	"	" cash on E. Colburn's note	522 50	
"	"	" interest	526 52	
				2,786 08
"	"	Amount carried forward		4,411 67
1851.		To amount brought forward		$4,411 67
Aug.	15	" W. Murdoch's note	$522 50	
"	"	" interest	526 52	
"	"	" W. Murdoch's note	522 50	
"	"	" interest	526 52	
"	"	" Mary R. Wheaton's note	303 36	
"	"	" interest	305 28	
1853.				
Feb'y	23	" cash to R. Pinch	88 13	
"	"	" interest	80 64	
April	28	" cash to Williams & Haywood	2 50	
"	"	" interest	2 25	
June	22	" cash paid Adams, sundries	44 92	
"	"	" interest	40 28	
"	"	" cash to W. J. Clarke	84 38	
"	"	" interest	75 29	
"	"	" cash to church in Pittsboro'	25 00	
"	"	" interest	22 41	
"	"	" cash to Tom March	30 00	
"	"	" interest	26 89	
"	"	" cash to Patsey Simpson	12 00	
"	"	" interest	10 76	
"	"	" cash for taxes	13 36	
"	"	" interest	11 66	
"	"	" cash to Martha Simpson	11 73	
"	"	" interest	9 86	
"	"	" cash paid E. Colburn	67 40	
"	"	" interest	60 06	
"	"	" cash paid sheriff Bertie	129 52	
"	"	" interest	115 63	
"	"	" cash for support women and children, 2 years	180 00	
"	"	" interest	161 34	
				4,012 69
				$8,424 36

138 *Account G, with report of commissioner.*

Balance sheet of accounts D and F.

Thomas P. Devereux in account with the estate of Mrs. F. Devereux, as administrator, as per accounts D and F.

1868.		Dr.	Cr.
May	30	To amount of personal property and interest received by him to this date as per account D	$50,057 36	
		By amount expended by T. P. Devereux on account of his administration, as per account F		$8,424 36
			$50,057 36	8,424 36
		To amount to balance		41,633 00
			$50,057 36	$50,057 36
		To amount of balance due estate of Mrs. F. Devereux on account of the administration thereof by T. P. Devereux		41,633 00

Account C, with report of commissioner.

Legacies paid by Thomas P. Devereux.

Estate of Mrs. Frances Devereux in ℅ with Tho's P. Devereux, on account of the balance of annuity of $3,000, and of $50,000, charge on land, against which the pecuniary legacies in the will are to be charged.

1849.				
June 3	To amount of legacy to Thomas P. Devereux, in trust for certain annuities mentioned in will..		$7,500 00	
" "	Int. on same to May 31st, 1868, date of bankruptcy of T. P. D., as follows:			
	18 years	$8,100 00		
	11 months	412 50		
	27 days	33 75		
			8,546 25	
1850.				
Sept. 28	Amount of legacy paid to the "board of education of the Presbyterian Church of the United States of America"		2,000 00	
" "	Int. on same to May 31st, 1868 as follows:			
	17 years	$2,040 00		
	8 months	80 00		
	3 days	1 00		
			2,121 00	
Oct. 1	" amount of legacy paid "boa.d of home missions of the Presbyterian Church"		2,000	
" "	" int. on same to May 31, 1868, as follows:			
	17 years	$2,040 00		
	8 months	80 00		
			2,120 00	
1851.				
Sept. 2	" amount of legacy this day paid "Caldwell Institute"		4,000 00	
" "	" int. on same to May 31st, 1868, as follows:			
	16 years	$3,840 00		
	7 months	160 00		
	28 days	18 67		
			4,058 67	
	To amount carried forward			$32,345 92
139				
1851.	To amount brought forward			$32,345 92
Nov. 4	" " of legacy paid "board of foreign missions of the Presbyterian Church"		$2,000 00	
" "	" int. on same to May 31st, 1868, as follows:			
	16 years	$1,920 00		
	6 months	60 00		
	26 days	8 66		
			1,988 66	
1858.				
Dec. 24	To amount of legacy this day paid "Union Theological Seminary"		2,000 00	
" "	To interest on same to May 31st, 1868, as follows:			
	9 years	$1,080 00		
	5 months	50 00		
	6 days	2 00		
			1,132 00	
				7,120 66
1868.				
May 31	To total amount due Thomas P. Devereux, at this date, on account of the pecuniary legacies paid by him, which is carried to general balance sheet marked account "E"			$39,466 58

Opinion of referee, No. 1, supplemental to report of commissioner.

GINFILL BLAKE, WIFE, ET AL.,
vs.
ASSIGNEES IN BANKRUPTCY OF T. P. DEVEREUX ET AL.

The referee has most carefully considered the evidences heretofore laid before him in this cause, the arguments of counsel, and all the authorities placed before him.

The defendant offers in evidence a book, in which it was proved accounts between Mrs. Frances Devereux and T. P. Devereux were kept by John Devereux, the grandson and son respectively of the above parties, as agent for his father for that purpose. That said John Devereux, or his father, each year handed copies of entries in said book to Mrs. Devereux, and that those copies were received by her without objection for a long course of years. It was also proven that only the copies of the entries, and not copies of the vouchers or the vouchers themselves, came into the possession of Mrs. Devereux. It was also shown that Thomas P. Devereux alone could be absolutely certain of the correctness of said vouchers. It further appears that T. P. Devereux was a lawyer of no ordinary skill, foresight, and legal learning, and it appears to the referee that he did know, or ought to have known, that the relation then existing between himself and mother required the most careful dealing, and it, in the opinion of the referee, has not been shown that the manner of keeping said account-book and handling said vouchers came up to the legal requirements under the circumstances. The defendants contend that the book should be received—

I. Because it contains abstracts of the payments made by T. P. D. to and for Mrs. Frances Devereux.

The referee cannot take it upon himself to say that upon the law
140 and the evidence adduced before him that said book is evidence, even admitting that it was an abstract of the vouchers, considering the mode in which the book was kept, and that the vouchers themselves, if produced, would require the most strong and searching testimony to sustain them.

II. It is admissible as a book of original account, copies of which were annually furnished to Mrs. Frances Devereux and retained by her without objection. The retaining of them by her does not, under the circumstances, in the opinion of the referee, warrant him in receiving the book as evidence in this point of view, as *in* seems to him that her implied admission, if the relation of cestui que trust or general agent did exist, which the referee thinks did, cannot be received in evidence without better, stronger, and clearer evidence that Mrs. Devereux understood fully the nature and substance of said writings, than has thus far been laid before him.

III. The book is evidence, as an old account, containing matters of charge and discharge, and appearing to be fairly kept; loss of the vouchers being satisfactorily accounted for.

The referee cannot think this proposition to be a good one, for it has been proven that said book was kept by the trustee himself, or his agent, and that it was not a contemporaneous record of his transactions, but only a statement made up annually from data furnished by him to his agent.

The referee, for these reasons, therefore, feels himself forced to reject the book in each and every point of view in which it has been offered by defendants, and so rules.

In coming to this conclusion, he is to a very great extent governed by the law laid down in the case of Lee et al. vs. Pearce, wife, 68 N. C. Reports, p. 76.

October 23rd, 1873.

E. F. PAGE,
Commissioner.

Exhibit M M, with report of commissioner.

Opinion of Chief-Justice Chase, at June term, A. D. 1869.

Circuit court of the United States, district of North Carolina.

UMSTEAD AND WIFE AND GEORGINA DEVEREUX)
v.
THOMAS P. DEVEREUX & OTHERS.)

This is a suit in equity to compel an account. George Pollok died about 1830. He left one sister, named Frances, who married John Devereux, and a large estate, consisting of lands, slaves, and other property. John and Frances Devereux had three children, Thomas P., George, and Frances Ann. George married Sarah Elizabeth , and died leaving two children, Georgina and Ann Elizabeth. The latter married Frank Umsted; the former remained single, living with her mother, who had removed from North Carolina to Connecticut. In 1839 John and Frances Devereux executed a deed, conveying all the real estate, and John Devereux executed a deed, conveying all the personal estate, derived from Pollok, to their son T. P. Devereux. Each deed contained clauses charging the estate conveyed with an annuity of $3,000 a year in favor of Mrs. Frances Devereux, and also created a trust in her favor
141 to the amount of $50,000, subject to be disposed of by her appointment by will or otherwise. Subsequently, in 1845, Mrs. Devereux, then a widow, executed an explanatory deed, declaring the annual payment of $3,000 to be interest on the $50,000, and subject to reduction in proportion to reductions made in that sum under her directions. Two (2) years afterward, Mrs. Devereux died, leaving a will, in which she declared that she intended to exercise the power of appointment. The will provided for the payment of certain legacies, and also for the disposal of certain property, and the payment of her debts. T. P. Devereux was one of the executors named in the will. He, however, renounced the executorship, as did the others named; and an administrator, with the will annexed, was appointed. But, notwithstanding this renunciation, T. P. Devereux exercised a large control in the administration; bought up several of the legacies, and claimed the right to the whole estate, including the profits made by these purchases to the exclusion of the children of George Devereux. It must be remarked that the deeds of settlement provided that the whole estate granted by them should vest in T. P. Devereux; and that any residue of the sums placed in trust of Mrs. Devereux,

which might remain undisposed of under her direction, should also lapse to him. Under these circumstances, Umsted and wife, and Georgina Devereux, filed their bill alleging that they were entitled to the balance of the estate of Mrs. Francis Devereux, after payment of the debts, as co-heirs with T. P. Devereux and Frances Ann, who had married Bishop Polk of Tennessee.

The case was fully argued by Mr. Fowle and Mr. Haywood for the complainants, and by Mr. Moore and Mr. Bragg for the defendants.

Upon this case the court is of the opinion that an account must be taken (1) of the payment out of the annuity of $3,000, or out of the $50,000 in trust, to or by direction of Mrs. Devereux; (2) of the charitable bequests in the will, and of the sums actually paid in satisfaction or purchase of them; (3) of the balances, if any remaining, of the $3,000, and $50,000, after deducting the sums paid to or by direction of Mrs. Devereux, during her life, and in satisfaction of legacies since her death; (4) also of the administration of the estate of Mrs. Devereux, showing the amount of assets (excluding balances, if any, of the $3,000 and $50,000), and of the debts paid, and the balance, if any; and for this purpose the same is referred to N. J. Riddick, as master, for examination and report; and until the coming in of the report, all questions are reserved.

Depositions of John Devereux, No. 1, with report of commissioner.

RALEIGH, *October 20th*, 1873.

Depositions taken in the cause of Grinfill Blake, wife, et al., vs. William J. Hawkins and Walter A. Clarke, assignees in bankruptcy of Thomas P. Devereux, deceased, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux.

Examination of John Devereux:

JOHN DEVEREUX, being duly sworn, deposeth as follows:

This book came to me from my father, for the purpose of entering the account between my father and his mother. He also used it for other accounts. I think I got it in the latter part of 1840 or first part of 1841, though I cannot state positively the date. The entries in said
142 book up to June 21st, 1847, are in my handwriting; the entries in a different handwriting, on pages 34 and 35, were in my father's handwriting; the entries on pages 37 and 38 are also in my father's handwriting. The balance of the entries up to June 21st, 1849, are in my handwriting. The account spoken of in this deposition is that between my father and grandmother, based on the "deed of settlement" of July 3rd, 1839. I think that my entries made in this book were begun about the last of 1840, or first 1841, when this book was bought for the purpose of keeping said account. This book was written up and the account balanced once in every year, within a month after the 21st of June of each and every year. The items entered on this account were from vouchers handed me by my father. The accounts were made up and submitted to my grandmother each year, but it is my impression that the vouchers were not, though my impression as to the last statement is more a matter of judgment than memory, but the vouchers were really for her inspection,

if she had called for them. The entries in the book were made once a year from vouchers furnished me by T. P. Devereux, but it was not a contemporaneous statement of vouchers from day to day, as expenditures were made. As far as I recollect, she never called for the vouchers. The state of my grandmother's affairs, and especially the yearly account, presented by my father or myself, would come up in conversation between my grandmother and myself after each annual statement, but the account was not formally discussed. My grandmother knew that this account was kept by me. In the conversations alluded to above my grandmother would regret that she had spent so much during the year, and express her determination not to spend so much during the ensuing year. She never raised any objections to any items in the account made up until about the year 1844 or 1845, I am uncertain which, when she commenced objecting to certain charges against her, which were afterwards, by consent, made the subject of reference to arbitrators. This reference was made to Bishop Polk, Dr. S. J. Baker, and S. W. Whiting, certain items being referred to Baker and Whiting together, and others to Bishop Polk alone. Bishop Polk made no award in writing, but Baker and Whiting did. The whole account, up to June, 1846, between my grandmother and father, was referred to S. W. Whiting, and by direction of both parties I turned over the vouchers to him. I think this arrangement was arrived at in the summer of 1846. I have never seen the vouchers since they were turned over to Whiting. There was a voucher for every item charged in the account, except certain items admitted by her, which from their nature did not admit of a written voucher.

Cross-examination of John Devereux on behalf of plaintiffs:

The books which contained the accounts between my father and grandmother, and which was mentioned in my examination-in-chief, was never submitted to my grandmother, so far as I know. When I spoke of the accounts submitted to my grandmother I did not mean the book itself, but copies of the entries in the same for the current year, which entries were made by me. When the first item charged against Mrs. Frances Devereux of $4,099.45 and all entries made by me were entered, the evidences I had to support said charges were my general knowledge of the account, checks endorsed by Mrs. Devereux, receipted accounts against her, cancelled notes signed by her in the possession of my father. This is what I meant by vouchers to support each item. Most of the annual accounts heretofore spoken of by me, copies of which were presented
143 by me, were done so personally, and to my knowledge all of the vouchers for accounts spoken of above were delivered to S. W. Whiting at the time he was chosen to state the account between Mrs. Frances Devereux and my father. In conversations with Mrs. Frances Devereux she more than once acknowledged that Whiting was authorized by her to state the account.

Re-examination of John Devereux for defendants:

The copies of the annual accounts, which I speak of handing to my grandmother, I afterwards saw in S. W. Whiting's hands, but never got a sight of them after that. For the above accounts, and the vouchers therefor, I have searched among the papers of my father, T. P. Devereux, and did not find them. I also, during the life-time of George W. Mordecai

who was the administrator of S. W. Whiting, and one of the assignees in bankruptcy of Thomas P. Devereux, made search, under his direction, among his papers, for the papers appertaining to the management of my father of the affairs of my grandmother, and did not find them. This latter search among Mr. Mordecai's papers was made, not for these particular vouchers, but for all the vouchers connected with my grandmother's estate. I have made no other search, not knowing any other place in which they were likely to be.

Cross-examination:

Mrs. Margaret Mordecai is executrix of George W. Mordecai, deceased.

Question. Have you any reason for knowing or believing that any search was made by any person for the accounts and vouchers referred to, between the time when this suit was instituted and the time when you made search as aforesaid?

Answer. I have no knowledge of any such search, and have no reason to believe any such search was made.

Question. At what time did you make the search alluded to among your father's papers?

Answer. In the fall of 1869, when I made the search upon request of Mr. Mordecai, and found no vouchers, except those heretofore produced in this cause. Upon being asked by Mr. Mordecai if there were no more, I made further search, but found none. The search among Mr. Mordecai's papers was made in December, 1870, shortly before his death, in February, 1871. These vouchers were kept in the vaults of the Bank of the State, until they were delivered by me to S. W. Whiting. Mr. Whiting was then teller of the State Bank, and was with me when I took them from their then place of deposit, and they were delivered to him in the bank. They were kept in a tin box, which I kept in the bank, containing other valuable papers also. This box was used by my father and myself jointly, as a deposit for our valuable papers. The box was never taken by me from the bank, nor have I personal knowledge of how it was removed therefrom. I saw it in my father's possession, at his plantation, in Halifax County, in 1857 or 1858, shortly after he ceased being a citizen of Raleigh. I had frequent access to the box after that time, and never saw the vouchers alluded to above again, though I, from time to time, looked in the box on other business, examining other papers, though they were so bulky that I should have seen them if they had been there. When I handed the vouchers to Mr. Whiting I gave him no special instruction as to what disposition should be made of them after the account was stated by him. I have never made any particular search in the State Bank for these vouchers. I went there, at one time, and asked for all my father's papers, which were given me, but the vouchers were
144 not among them, and I did not get the tin box above alluded to.

This demand for papers was made after I saw the tin box above alluded to at my father's plantation, in Halifax County, in his possession. My father kept his bank accounts in the Bank of the State of North Carolina, at Raleigh, between July, 1839, and January, 1847. His pass-books with said bank are, many of them, in my possession; but I cannot say, certainly, whether the books embracing the above period are in my possession or no.

Cross-examination of John Devereux:

My father was a member of the legal profession. He left the bar in 1839, and I believe, had a very fair standing in the profession, after a practice of several years. I think he was called to the bar in 1815. He was reporter of the supreme court of North Carolina for about four years, and joint reporter with William H. Battle for about four years more.

At the time when the deed of settlement was made in 1839 Mrs. Frances Devereux (who was about 68 or 70 years of age) owned a life-estate in a plantation in Bertie County, containing about 4,400 acres, worth, on an average, $25.00 per acre, and the gross income of which I would average at $5,000, the net income at $1,500 less, which, at that time, was in possession of her husband, and cultivated by him.

Re-examination of John Devereux for defendants:

The character of my grandmother's intellect was, I should think, rather above the ordinary. She was a woman of strong, vigorous mind, and thoroughly capable of attending to her own pecuniary interests.

Further examination of John Devereux for defendants:

Q. Look upon the ledger, heretofore referred to in your examination, and say why, and upon what, you made the entry to the debit of Mrs. F. D. of $4,099.45, of the date of April 15th, 1840.

(This question and the answer thereto was excepted to by the counsel for plaintiffs.)

A. Upon evidence then submitted to me, which I regarded as abundantly satisfactory; but, at this distance of time, I cannot say specifically of what such evidence consisted, whether of checks to her order endorsed by her, receipted accounts against her of third parties, or cancelled notes due third parties by her.

Q. Do you make a similar answer to all the other items debited to Mrs. Frances D. upon that ledger, entered by you, or, if your answer is different, specify the items.

(Question and answer excepted to as above.)

A. I make a similar answer to all items, up to the 21st June, 1846; from that time on the vouchers have been filed with the referee.

Q. State whether or not you made any entries of debit to Mrs. F. D. from April 15th, 1840, to 21st June, 1846, for which you did not have satisfactory vouchers, or her concurrence in the charge, or personal knowledge of the propriety of the charge.

(Q. and A. excepted as above.)

A. I did not.

Cross-examination of John Devereux:

Q. When you say, in reply to the last interrogatory, you had satisfactory vouchers, &c., to whom do you mean that they were satisfactory?

145 A. Satisfactory to me of the expenditure of that amount of money.

Q. Were there not among the papers, which you style vouchers, and which were presented to you by T. P. D., and which went to make up the charge of $4,099.45, any notes signed by T. P. D. himself, which he

professed to have given on account of his mother, and to have subsequently taken up, and for which he claimed credit, which you gave him?

A. At this length of time I cannot say positively that there were or were not papers of any special character. I feel confident, however, that there were none of the kind mentioned in the Q.

Q. Was there not a note of the description specified in the last interrogatory, payable to Colin M. Clarke, of upwards of $500?

A. I have no recollection of it.

Q. Is there any one paper, upon which you acted in making said entry of $4,099.45, of which you have a distinct recollection, and of which you can give an exact description?

A. Day before yesterday I should have answered there was none, but in looking for my father's pass-book, between 1839 and 1846, as was requested in this examination, I find memoranda in his handwriting of many or perhaps most of the items which went to make up that charge. But these memoranda will not enable me to give a distinct and exact description of the said debit.

Q. State the substance and effect, if you can recollect them, of any voucher submitted to you, upon which you made up the sum of $4,099.45?

A. At this distance of time I cannot pretend to do so.

Q. State the substance and effect, if you can, of any voucher submitted to you during the whole period embraced in the book, up to the 21st June, 1846, upon which you acted in making your entries.

Answer. When I made the entry on page 20 to my grandmother's debit, as follows, viz, "To my bond to Mrs. S. E. Devereux, given by your direction, $5,000.00," I had a personal knowledge of his giving such a bond at the request of my grandmother. I know that it has been subsequently paid, and I see no other item that I now recollect the particulars of, except the entry regarding the Trent land, on page 20, and for this there was no written voucher.

Q. Upon what evidence and under what circumstances did you make the entry of which you have last spoken?

(Q. and A. objected to by counsel for defendants.)

A. From repeated conversations on the subject with my grandmother and her husband, in explanation. The Trent land was part of that conveyed by deed of 3rd July, 1839; the title proved bad as to one-half of said land, which half was received by the claimants from Thomas P. Devereux. John Devereux, Mrs. F. D.'s husband, and my grandmother told the said F. D. that she ought to allow T. P. D. a credit of $4,000 on her claim against him, by reason of this loss. She frequently, in my presence, assented to said claim and its fairness, and, so far as my recollection extends, Mrs. F. D., during her life-time, never objected to the charge itself, but to the interest, as charged thereon.

Q. Can you undertake to say that you were familiar with the handwriting of all the persons to whom Thomas P. Devereux paid money on account of his mother; that you had seen them write, or seen writings which were admitted to be in their handwriting, so that you could pronounce a reliable opinion, as to its genuineness, upon seeing a specimen of any such handwriting.

A. I cannot.

146 Q. Did you, when any receipted account against Mrs. D. was

presented to you, and claimed as a voucher by T. P. D., investigate the propriety and genuineness of said account, or allow the same simply upon its presentation as aforesaid, assuming its propriety and genuineness of the receipt?

A. In case of well-known firms and houses in town no such investigation was made. In case of unknown parties her order in most, if not all, was endorsed on the account. There might have been some which were taken from my personal knowledge, verbal admissions, and orders by her.

Re-examination by defendants:

Q. Is your recollection now so refreshed, upon looking upon the ledger, that you can say that the items therein debited to Mrs. F. D. were expenditures made for her and at her request?

A. I can hardly say that my memory is refreshed, having always felt confident that they were so made.

Q. Please explain what you mean by your answer to the last interrogatory.

A. I mean that having made out the accounts myself, year by year, on evidence at that time satisfactory to me, it does not need an examination of the ledger to enable me to say now that the entries in my handwriting therein were of sums expended for the benefit of Mrs. Frances Devereux.

Cross-examination:

Q. Do you swear, as a fact within your own knowledge, that Thomas P Devereux laid out every sum with which you have credited him in said account, for Mrs. F. D., and on account of a debt for which she was legally bound?

A. I can only swear that he furnished me with evidence which was satisfactory to me at the time of such expenditures.

Q. In your reply to the last interrogatory by the defendants you say, "It does not need an examination of the ledger to enable me to say now that the entries in my handwriting therein were of sums expended for the benefit of Mrs. F. D." Do you mean by this answer to say that such was your opinion, upon the evidence then offered you when you made such entries, and such is your opinion now, or do you mean to assert it as a fact within your own knowledge that each of said disbursements was made for the benefit of Mrs. F. D., for a debt that was justly due by her and by Thomas P. Devereux?

A. I mean to say that such was my opinion at the time, based upon the evidence furnished me then, and such is my opinion now.

Re-examination by defendants:

Q. Look at the paper marked "E. E." Have you ever seen it before; if so, when and where?

A. I have seen it frequently before. I saw it in my father's possession in the year 1847, I believe, first.

Q. State whether you saw it in your father's possession frequently, and where it was found after his death.

A. I saw it frequently in his possession among his papers. After his death it came into my possession through the hands of Mr. Mordecai, who took charge of his papers at his death, I being absent from the State.

147 (The signature to this paper is admitted by plaintiffs to be in the proper handwriting of Mrs. Devereux.)

A. Do you know why and when S. W. Whiting examined the accounts between F. D. and T. P. D., as was stated in this paper that he had done?

A. In the summer of 1846, the discussion of the account rendered the 21st June, 1846, was very frequently up between my father and grandmother in my presence. After many discussions the conclusion was arrived at, at what time I cannot state positively, to have the accounts examined by Whiting, and in consequence of that conclusion I handed Mr. Whiting the vouchers.

Q. Were the vouchers you handed Whiting in support of the account of 1846, alone, or for that year altogether with other years?

A. The account was made up usually from the 21st of June to the 21st June of each *each* year. The vouchers for each year, tied up in a separate bundle, by me handed by me to Mr. W., as before stated, in the bank. These vouchers were all I had from the opening of the accounts, 15th April, 1840, to 21st June, 1846. I have a very distinct recollection that Mr. Whiting wrapped the vouchers of each year in the copy of the account for that year; and since then I have never seen them. Copies of the account were not furnished Mr. W. by me, and, as far as I know, not by my father.

Q. Was Mr. Whiting an intimate friend of your grandmother's?

A. As much so as a man of his age would naturally be with a woman of her age; she having been intimately acquainted with his mother, and all parties having confidence in his clerical skill and fairness.

Q. Did Mrs. Frances Devereux reside with your father?

A. She did not.

Q. Did you ever, at any time, hear your father advise Mrs. F. D. with regard to her affairs?

A. Never, except the negative advice, not to spend so much money.

Cross-examination:

Q. State the character of the discussions between your father and Mrs. F. D., which precedes the reference to Whiting to state an account, and if it involved only differences of opinion regarding the account rendered on the 21st June, 1846. State further, at how many of such discussions you were present, and whether you tookany part therein.

A. The character was a general one of the whole accounts, and did not involve those of the year ending June 21st, 1846, more particularly than those of any other year. I can't state with any certainty what specific conversation occurred at any particular time. The disputes between them mainly concerned differences of opinion upon the items, which were subsequently referred. I was present at several; six, eight, or ten of such conversations—it is impossible to state the number with any certainty—and took but little part in the discussion.

Q. Have you not stated in a previous part of your examination that Mrs. F. D. received the annual accounts rendered by you and all of them, and retained them, without any dissent or objection?

A. None expressed to me at the time of rendering. This is what I meant.

Q. Do you know, of your own knowledge, and not by reason of information derived from any one else, whether Mr. Whiting ever completed the statement of accounts between the parties?

148 A. I do not. I have no recollection of ever having seen the account made out by Whiting.

Re-examination:

Q. State what you know about Whiting's having completed the account.

A. I know, of my own personal knowledge, nothing, as it was my habit at that time to leave town early in October, and return the following June, with only rare and casual visits to the place between those dates.

Depositions of John Devereux, "No. 2," with report of commissioner.

Further examination of John Devereux for defendants:

In relation to the charge of $1,000 for Booker, April 15th, 1841, I know that Booker was a slave and bought, at my grandmother's instance, for a carriage-driver, and came into her possession as such. If I had not seen the entry in the book I should not have recollected the price of said slave, but must have had the bill of sale before me when such entry was made, and having the book before me I am satisfied that such amount was correct. On the settlement of my grandfather's estate my grandmother dissented from the will, and was entitled to a child's part. The executors only sold the surplus crop of that year. The balance of the estate was divided, without a sale, each of the distributees paying their proportion of the debts of the estate. I know that there was a balance due the executors, though I am not certain of the exact amount, though I have no doubt it was exactly four times the amount charged June 21st, 1847, in the ledger heretofore alluded to, as being one-fourth of the balance due the executors, that being Mrs. Devereux's part. In regard to the item charged "To your one-third part of stock, valued by George W. Mordecai," June 21st, 1847, in said ledger, instead of sale of the stock by the executors, the parties in interest agreed that it should be valued by Mr. Mordecai, and they would take the stock, it being in contemplation to continue the farm, Mrs. D. putting in one-third, and I putting in two-thirds.

(Counsel for plaintiffs excepts to all the evidence regarding any settlements made regarding the estate of John Devereux, sen., deceased.)

Quere. What was the relation existing up to 1847, so far as you recollect, between Miss Ogden and Mrs. F. D., and between the former and your father, T. P. Devereux?

Ans. Intimate friendship existing, so far as I can understand, between my grandmother and Miss Ogden in early youth. I know of no particular relations between my father and Miss Ogden. Miss Ogden's residence was Connecticut, in which State my grandmother resided for some time. Never, to my knowledge, did Miss Ogden visit my grandmother or father in this State.

Q. State any fact you know which would lead you to believe that your grandmother directed your father to pay Miss Ogden her annuity.

Ans. I know of none in my own knowledge, except that heretofore stated of my grandmother receiving the accounts yearly and making no objection to them.

Q. Please state the connection existing between your grandmother and Mrs. C. E. Fuller, towards the latter part of your grandmother's life.

Ans. Mrs. Fuller lived with her, as housekeeper and general
149 manager of my grandmother's household affairs, and acted also as a kind of distributor of her charities about the neighborhood. There was no connections of friendship or business between Thomas P. Devereux and Mrs. C. E. Fuller.

Q. What was the religious persuasion of your grandmother?

Ans. Presbyterian. My father was an Episcopalian.

Q. Was your grandmother a devotee to her religion and given much to religious charities?

Ans. Very strict in her religious observances, devoting the greater part of her time to them, and exceedingly fond of making donations for supposed religious and charitable purposes.

Q. Did your father, as far as you know, have any sympathy with your grandmother in such supposed charitable donations?

Ans. None; but disapproved of the indiscriminate and lavish use of money in that way.

Q. Do you recollect or know anything regarding the annuity to Mrs. E. Rives, and how it came to be disallowed by S. W. Whiting in his statement *in* October 20th, 1846?

Ans. Mrs. Rives was an intimate friend of my grandmother's, and had been very kind to my father during his boyhood and youth. I know nothing of the matter, except from conversations on the subject with my father.

Q. Please state, if you know, what connection existed between John Primrose and your grandmother.

Ans. Mr. Primrose, being an elder in the Presbyterian church, commanded great respect, esteem, and confidence, and was trusted by her in the management of any of her pecuniary matters before Mr. W. D. Cooke formally assumed the management.

Cross-examination:

Quere. Do you know that Mrs. F. D., about the year 1845, objected to T. P. D.'s paying an annuity to Miss Ogden on her account?

Ans. Yes.

Q. Do you know that the question of the propriety of the payment of this annuity by Mr. Devereux, on account of his mother, before the year 1845, was referred to Mr. D. and Mrs. F. D. for decision to Bishop Polk, and that the bishop made a decision adverse to the claim of Mr. D. to be allowed this annuity?

Ans. I know the fact from conversations with my father.

Q. Have you any knowledge that Mrs. Frances Devereux authorized Thomas P. Devereux to pay money on her account to Mrs. C. E. Fuller?

Ans. I have no knowledge.

Q. Have you any knowledge that Mrs. F. D. authorized T. P. D. to pay money on her account to John Primrose?

Ans. I have no knowledge.

Q. Who were the executors of John Devereux?

Ans. T. P. Devereux and myself. We both qualified as such.

Q. Did Mrs. F. Devereux owe the executors of John Devereux; if yes, what was the amount?

Ans. Yes; one-fourth of the balance which appeared due by the account-current, which was her share as one of the distributees of the estate.

Q. Her share of what?

Ans. The balance due the executors on a settlement.

150 Q. Have you any distinct recollection of what the amount of that balance was?

Ans. I have not, but the account-current will show.

Q. Did the executors of J. D. Devereux return any inventory?

Ans. They did not.

Q. Have you any recollection of Mrs. F. D's having drawn an order on you for $1,300 and upwards, in favor of Thomas P. Devereux, to settle the full balance due by her on account of the debts of her husband's estate and the purchase of stock on the farm; and do you know what has become of such order, if you have any recollection of it?

Ans. I have no recollection of ever seeing any such order; indeed, I am quite confident I never saw it.

Re-examination for defendants:

Q. In your cross-examination you stated that in conversations with your father he had told you that Bishop Polk had made some decision about Miss Ogden's annuity. Please state all that your father told you in such conversations bearing on that subject.

Ans. He expressed great dissatisfaction at the little attention which Bishop Polk had given to the matter, and said he had requested him to put his decision in writing; but that up to that time he had failed to do so. He expressed a determination not to be bound by Bishop Polk's decision in its then present form, giving as a reason for such determination on his part, that he regarded the Ogden annuity matter as thoroughly understood and settled years before between him and Mrs. Frances Devereux, as would appear by his accounts, and on that point he did not intend to recede.

Q. In stating his dissatisfaction at the finding, did he state the origin of the annuity—how the annuity came to be made?

Ans. I cannot undertake to say.

Q. What did you understand from your father? Was the question submitted to Bishop Polk?

(Q. objected to by counsel for plaintiffs.)

A. Chiefly as to the Ogden annuity.

Q. What do you mean by the Ogden annuity?

Ans. I mean the annuity which was charged on the account as paid to Miss Ogden.

(The defendants offer in evidence the account-current of Thomas P. D., and John D., the executors of John Devereux, deceased, with the estate of their testator, as transcribed in the record books of the county court of Wake, a copy of which is herewith filed, marked "F F," which is objected to by the plaintiffs.)

Q. Is this amount correct?

A. Not having examined the copy I can't say that the copy is, but the original was.

(Question and answer objected to by plaintiffs.)

Q. Do you know what became of the original?

Ans. I must be in the clerk's office if not destroyed.

J. DEVEREUX.

Sworn and subscribed before me, this 25 day of November, 1873.

E. F. PAGE,
Commissioner.

151 *Deposition of Wm. D. Cooke with report of commissioner.*

Examination of William D. Cooke, for defendants, assignees in bankruptcy of T. P. Devereux, deceased.

WILLIAM D. COOKE, being duly sworn, deposed as follows:

The paper marked "B B" is an account made out by me, not from any vouchers coming within my personal knowledge, but from data given me by T. P. Devereux and his mother. My signature thereto "E. E., correct," was not made, as agent of Mrs. Devereux, binding upon her, but merely made to certify that the said account was correct according to their directions. I am satisfied that I returned this paper, or a copy of the same, to Mrs. Devereux. I am satisfied that all the items in above account were agreed to by both parties before they were entered by me. My best recollection is that the paper marked "B B," above referred to, was the very one given by me to Mrs. D., and that memorandum entered at the foot of the account was made at her request at her house after the account was made out by me at my house, which memorandum begins "It is understood," &c.

Cross-examination of W. D. Cooke:

The making out of said account was mere clerical labor on my part. I was not acting as referee to takes an account between the parties, and did not pass upon, or undertake to pass upon, any of the items.

WM. D. COOKE.

Sworn and subscribed before me this 21st of October, 1873.

E. F. PAGE,
Commissioner.

Re-examination of W. D. Cooke:

At the request of Mr. T. P. Devereux I called on Mrs. Frances Devereux, about the 8th November, 1847, and had a conversation with her concerning certain matters of account between her and Mr. T. P. D. I remarked to Mrs. D. that there were some matters of difference between her and her son, which I thought ought to be settled. She then asked me if I knew anything about the matters; if I had examined the subject. I replied to her that I had, and that I thought that Mr. D. was right in the manner in which he wished to settle it. She then said, "Go and settle it." I think these were her very words. I then went back to Mr. T. P. Devereux's and told him what she said, and got from him the data upon which the settlement was made. One of these items was in regard to the loss of the Trent land, another in regard to money paid to Miss Ogden, another concerning the Pollock monument, and the last regarding the family burying-ground. There was an agreement made regarding the above items by the parties. The agreement was made in accordance with my suggestion, but my suggestion was made in accordance with Mr. T. P. Devereu's suggestion.

I wish to modify the last statement by saying that the setttlement was made by me, in accordance with Mr. Devereu's statement, after he satisfied me that he was correct. (Statement of interview with T. P. D. and Mrs. D. concerning the account.)

One day, about the 8th November, 1847, on passing Mr. T. P. D.'s house on my way to Mrs. F. D.'s, Mr. D. called me, and remarked that there was a matter or matters of difference between himself and his mother, which he was very anxious to have settled; that he had re-
152 peatedly tried to settle the same with his mother, but had failed; that he was very anxious to get her to settle it; that if anybody could get her to do so, I could. I replied that I should be very glad to do so, if I could. He then requested me to walk in and examine the matter, which I did. After a full examination of the matters in dispute, I was satisfied that Mr. D. was right in the manner in which he wished to settle it. I then went on to Mrs. Devereux's house. I was the attorney of Mrs. D., under a power of attorney from her, which is hereby produced, marked "C C." (Complainants admit the said power of attorney.) My relations to Mrs. D. were mere those of a mother to a son than any other way. She seemed to treat me as a son, and I regarded her almost as a mother. She talked to me freely concerning all her business matters. I don't know that she ever spoke to me regarding family affairs more than she would say to anybody. She never made me a confidant regarding family matters, or told me more regarding them than she would have told anybody else. Regarding the business relations between her and her son, I knew that he had funds in his hands upon which she had a right to draw, and I knew of the disputed items between them, hereinbefore mentioned. I recollect no other disputed items between them.

Quere. (By defendant.) Do you remember ever seeing in the possession of Mrs. D. annual accounts respecting the fund of $50,000 rendered by T. P. D.?

Ans. I have a faint recollection of seeing such accounts, but whether in the possession of Mr. or Mrs. Devereux I cannot say, though my impression is that they were not rendered annually, and I have further impression that I have had such a statement, and may have them now. If I had them, I must have gotten them from Mr. D.; couldn't have gotten them anywhere else. Mr. Devereux was not in the habit of making a settlement with me of this fund annually at all; I have reference to the settlement of this $50,000 fund.

Quere. Did Mrs. D. usually overdraw her annual allowance?

Ans. During the latter part of her life her drafts amounted to more than $3,000 annually, which was the amount agreed upon that she was to draw annually, being the interest upon $50,000.

Cross-examination of W. D. Cooke:

Quere. How long a time was consumed in your interview with Mr. D. just preceding your interview with Mrs. D., mentioned in the first part of your deposition taken to-day?

Ans. I could not state positively, but my impression is that it was about an hour.

Quere. In that interview with Mr. D. state what occurred, as far as you can recollect it, and all that occurred.

Ans. That would be a repetition of what I have already stated. I can state it, but it would be the same.

Quere. Did you not state to me in conversation this morning, before you came upon the stand, that in this interview with Mr. D. he stated his views of the matters in dispute between himself and his mother; also her views respecting the same matters; and having heard these statements, you became satisfied that Mr. Devereux took a right view of the matters?

Ans. I did; that is what meant when I said, in my examination to-day, "after careful examination."

Quere. How long a time were you with Mrs. D. upon the occa-
153 sion above referred to, consulting with her regarding the settlement with T. P. D., esq'r?

Ans. I think it was not over 10 minutes before she told me to make the settlement.

Quere. Did you detail to her, at length, the reasons upon which you based your conclusion that T. P. D. was correct in his views?

Ans. I did not.

Quere. Was the agreement which was finally entered into between the parties in accordance with the views expressed by T. P. D. in his interview with you before you saw Mrs. D.? [(Here the defendants interposed, and asked the following question:) Quere. Was the agreement referred to in above quere by Col. Haywood ever reduced to writing?

Answer. It was.

The above question by complainant and the answer thereto are objected to by defendants, because it is an indirect mode of arriving at the contents of the agreement, without producing the writing itself.]

Answer. It was in accordance with the wishes of Mr. D., as expressed after our examination of the matters in the interview with him, before I saw Mrs. Devereux. I mean that although there might have been some slight difference of opinion between Mr. Devereux and myself at first, he was satisfied with the arrangement as finally made. In fact, it was his wishes, though there were some little differences, which he finally gave in to.

Quere. What evidence, if any, was submitted to you by Mr. D., upon which you made up your judgment? Or did you rely mainly upon his statements in reference to the matters in dispute?

Ans. I relied entirely upon his statements.

Quere. Was the agreement of which you have spoken, between Mrs. T. D. and T. P. D., reduced to writing, and signed by them in your presence? If yes, do you know what has become of the written paper; and where did you last see it?

Ans. It was reduced to writing. I do not know what has become of the same, and do not know when I last saw it.

Quere. Did you preserve a copy of it, and can you produce it if required?

Ans. I did preserve a copy, but it has passed out of my possession. I gave it or handed it to Mr. S. A. Ashe, who now has it.

(This copy is marked "D O," and filed by defendants.)

Quere. When you spoke, in your examination-in-chief, of accounts between Mr. and Mrs. D., which you had some faint impression you might

have seen, can you say whether such accounts embraced matters before the power of attorney was executed by Mrs. D. to you, or after that time?

Ans. My impression is that they referred entirely to matters after my becoming her attorney.

Re-examined by defendant:

Quere. You stated, Mr. Cooke, that you relied entirely upon the statements made to you by Mrs D. Were those statements, statements of fact, or were they reasons given by Mr. D., satisfactory to you, in support of his view of the questions in dispute between him and his mother?

Ans. They were both.

Quere. Did he present to you any evidence other than his own declaration of the statements of fact so made by him?

Ans. I cannot say that he did not show me accounts, but my recollection is indefinite.

WM. D. COOKE.

154 Sworn and subscribed before me this 22nd day of October, 1873.

E. F. PAGE,
Commissioner.

Depositions of J. N. Bunting, with report of commissioner.

Examination of J. N. Bunting, for defendants.

J. N. BUNTING, being duly sworn, deposed as follows:

Q. Do you know anything of the original account between Thomas P. and J. Devereux, executors of the estate of John Devereux, senior, deceased, with the estate?

Ans. I do not.

Q. Have you looked for the same?

Ans. I have made diligent search for the same this afternoon, wherever I though' the same could be found, but was unable to find it among the records of my office. I am clerk of the superior court of Wake County.

J. N. BUNTING.

Sworn and subscribed before me this 20th day of October, 1873.

Exhibit A A with report of commissioner.

Award of Simmons J. Baker and S. W. Whiting in certain matters of account between Mrs. Frances Devereux and Thomas P. Devereux, which were referred to them by the parties.

In the matter of the charge of $559.42 charged M'r's D., on the October, 1839, as being a payment of the balance due on George Devereux's bond to Colin M. Clarke, after the payment of six thousand dollars, as directed by the deed of settlement. We award and decide that Mrs. Devereux should not be charged with this amount, because we think the appropriation for the benefit of George Devereux's family was not intended to exceed fifty thousand dollars, including the amount paid Colin M. Clarke, and that, therefore, the balance of the note to him, after paying the six thousand dollars, was properly due from the estate of George

Devereux, and because, if the balance was not paid by the estate of George Devereux, we see no reason for charging Mrs. Devereux with the amount, unless she voluntarily assumed the payment of it, of which we had no positive evidence.

In the matter of the grave-yard enclosure, charged on the first (1st) of November, 1840, ($333) three hundred and thirty-three dollars, we award and decide that Mrs. Devereux should be charged with only one-half this sum, and that the other half should be charged to the estate of her husband, John Devereux, because his body is buried there, and he was equally interested in securing a proper place for the interment of their family, and because Mrs. D. will be liable to a further charge of one-fourth the amount charged to the estate of her husband, which will make the amount of her contribution something more than two hundred dollars, which we think her full proportion.

In the matter of Mr. Pollok's monument, charged on the 16th October, 1843, $992, we award and decide that the charge is just and proper, because it appears to us from the evidence that Mrs. Devereux agreed with Mr. Stronack, the builder, to do the work, if, upon advising with Mr. T. P. Devereux, the terms offered should be thought fair; from which it appears that she then considered it a matter of her own, and, secondly,
155 because, while the other parties, who were interested as heirs of Mr. Pollok, or received portions of his property, under the deed of settlement, may in duty and equity be equally bound to share the expense with Mrs. Devereux, they cannot be charged with any portion of the same without their assent, which has never been obtained, nor has any evidence been offered to show that any attempt was made to procure it before incurring the expense.

Witness our hands and seals this 29th July, 1847.

S. J. BAKER. [SEAL.]
S. W. WHITING. [SEAL.]

Exhibit E E with report of commissioner.

Statement of Mrs. Frances Devereux's account up to the 22d June, 1846. Amount, $29,664.60. Signed by Mrs. Devereux.

Seymour W. Whiting has gone over and examined the accounts between Frances Devereux and Thomas P. Devereux, and after taking from the accounts of the said Thomas, heretofore rendered the said Frances, the sum of five hundred and twenty-five dollars ($525), with the interest thereon, heretofore charged to the said Frances by the said Thomas, as one-half of the annuity to Miss Elizabeth Reeve, the balance ascertained by him to be due the said Frances by the said Thomas is the sum of twenty-nine thousand six hundred and sixty-four dollars sixty cents ($29,664.60), which sum is due on and bears interest from the 22nd of June, 1846, and the said sum is hereby agreed to be correct, subject, nevertheless, to the following objections by the said Frances, viz:

1st. The sum charged in the said account is an annuity to Miss Ogden, amounting to the sum of three hundred dollars per annum, and it is agreed that the justice and propriety of the said charge be referred to the arbitrament of the Right Reverend Leonidas Polk. If he decides the same to be

correct, then, in respect to the said objection, the said account is to stand. If he decides that the said charges are not correct, then the said account is to be altered in that respect, and the said balance increased by the principal and interest of the said sums so charged.

2nd. By the sum of five hundred and fifty-nine dollars ninety-two cents ($559.92) to Colin M. Clarke for the balance of the debt of George P. Devereux, which does not appear separately in the said account drawn off by the said Whiting, but which the said Thomas admits to be a part of the first item ($4,099.45) in the same, and which was charged to the said Frances some time in the month of October or November, 1849.

3rd. The charge to the said Frances of three hundred and thirty-three dollars ($333.00) on the first day of November, A. D. 1840, for the grave-yard.

4th. The charge of nine hundred and ninety-two dollars ($992) for the cost of a monument, charged to the said Frances on the 16th of October, 1843.

These three last items, both as to their propriety and the proper amounts, if proper, the said Frances and Thomas have agreed to refer to the arbitrament of Doctor Strumans J. Baker and Seymour W. Whiting, and the said account is either to stand or be corrected according to their award. Subject to these exceptions, the said account is signed, and agreed to be correct, October 30th, 1846.

FRANCES DEVEREUX.

156 *Exhibit B B with report of commissioner.*

Account stated by W. D. Cooke.

1846.					
June	23	To cash	$2 98	$50 00	
"	24	" " Miss Parmelee	5 95	100 00	
"	30	" "	16 67	285 00	
July	6	" "	9 77	170 00	
"	10	" "	2 85	50 00	
"	13	" " M. B. Royster	49 96	887 14	
"	17	" "	5 90	106 00	
"	25	" "	2 82	52 30	
Aug.	1	" "	80	15 00	
"	"	" " Bill on New York	8 00	150 00	
"	6	" "	1 68	32 00	
"	24	" "	79	16 00	
Sept.	2	" " Taxes	77	16 20	
"	4	" "	52	10 00	
"	8	" "	1 41	30 00	
"	14	" "	68	15 00	
"	22	" "	2 25	50 00	
1846.					
Sept.	23	To cash	$62	$12 50	
"	29	" "	65	15 00	
Oct.	7	" "	62	15 00	
"	15	" " W. Stronach	21 15	516 25	
"	"	" " Wm. D. Cooke	2 05	50 00	
"	"	" "	61	15 00	
"	19	" " Wm. Peace	30 12	747 13	
"	29	" " Wm. D. Cooke	1 93	50 00	
Nov.	17	" " " " "	1 78	50 00	
"	28	" " " " "	5 07	150 00	
Dec.	7	" " " " "	3 23	100 00	
"	18	" " " " "	1 52	50 00	
"	26	" " " " "	4 37	150 00	

Exhibit B B—Continued.

1847.				
Feb'y 1	" "	Bill on New York	3 50	150 00
" 4	" "	Wm. D. Cooke	12 10	530 00
" 19	" "	" " "	3 05	150 00
Mar. 13	" "	" " "	1 63	100 00
" 22	" "	" " "	2 25	150 00
Ap'l 12	" "	" " "	3 16	275 00
" 24	" "	" " "	23	25 00
" 30	" "	" " "	85	100 00
May 21	" "	" " "	50	100 00
" 22	" "	" " "	1 15	231 15
" 25	" "	" " "	86	200 00
June 7	" "	Wm. Peace	1 91	820 30
" 8	" "	C. A. Edmonston	2 40	30 00
	" "	Miss O. (omitted Aug. 15th, 1846)	7 65	150 00
" 8	" "	W. D. Cooke	6 43	200 00
" 21	" "	to Miss O. (omitted Feb. 15th, 1847)	3 15	150 00
" "	" "	½ bal. due by the estate of John Devereux, dec'd, to his executors	$159 95	$1,772 65
	June 21	To ½ of stock, &c., valued by G. W. Mordecai	262 16	1,684 96
		To balance		22,620 19
				33,394 77
1846.				
June 21		By balance due to date	$1,779 88	$29,664 06
157				
1847.		Am't brought forward	1,779 88	29,664 60
June 21		By am't due for crop of 1845	135 30	2,256 74
" "	" "	" " " " " " 1846		120 95
" "	" "	" " on account of estate of J. Devereux, dec'd		91 75
		" balance of interest account		1,260 73
				$33,394 77
1847.				
June 21		By balance due		22,620 19
" "		" this am't charged as paid to C. M. Clark, with int. to date		874 80
" "		" this am't balance due Mrs. D. on account of burying-ground, less ¼ for J. D. estate		200 25
" "		" order on J. Devereux, to be paid out of crop of 1847		1,341 73
		Balance due June 21st, 1847		$25,036 97

E E. Correct.

WM. D. COOKE.

It is understood that the signing of the above account is not to bar Mrs. Devereux from having a reconsideration of the matters referred to Dr. Baker and Mr. Whiting as arbitrators, provided she is otherwise entitled to it.

Exhibit DD, with report of commissioner.

Memorandum of agreement between T. P. Devereux and Frances Devereux, November 8th, 1847.

Memorandum of agreement between T. P. Devereux and Frances Devereux in the settlement of the following matters:

1st. In the account rendered by T. P. D. against Mrs. D., the item of interest on the $4,000 agreed to be paid by Mrs. D. to T. P. D., for the loss of the Trent land, shall be stricken out from the face of the account, and T. P. D. shall restore to Mrs. D. in repayment of said interest (which he has collected) her order on John Devereux for $1,341.73, bearing interest from 21st June, 1847.

2nd. It is agreed that T. P. D. shall strike out of his account-current against his mother the annual charge of $300 for Miss Ogden, Mrs. D. to lose the interest on said advances.

3rd. It is agreed that T. P. D. shall pay over to Mrs. D. the sum of $496, it being one-half of the sum with which Mrs. D. has been charged for the monument erected over the body of Mr. Pollock.

4th. It is agreed that of the amount charged against Mrs. D. in the aforesaid account of $333.00 (it being ⅓ of the whole cost of the iron railing around the burial-ground of the family) Mrs. D. shall pay all but $200.25, without counting interest.

Raleigh, November 8th, 1847.

(S'gn') T. P. DEVEREUX.
(S'gn') FRANCES DEVEREUX.

158 *Exhibit E E, with report of commissioner.*

Power of attorney from Frances Devereux to Wm. D. Cooke, 13th February, A. D. 1847.

Know all men by these presents that I, Frances Devereux, of the city of Raleigh, in the State of North Carolina, do hereby constitute and appoint William D. Cooke, of the city of Raleigh, and State of North Carolina, to be my true, sufficient, and lawful attorney, for me, and in my name, and for my use, to attend to all my temporal affairs, such as the collection and payment of debts, &c., &c.

And for the purposes aforesaid, I do hereby grant unto my said attorney full power to execute and deliver all needful instruments and papers whatever, under seal or otherwise; to institute and prosecute to final judgement and execution all process in law or in equity; to defend any & all suits against me, the constituent; to submit any & all matters in dispute to arbitration or reference, or the same to settle and compromise; to appoint one or more substitutes under him, & the same to discharge at his pleasure, and generally to do and perform all such acts, matters, and things as my said attorney shall deem necessary or expedient for the complete and effectual execution of the authority hereinbefore granted, as fully as I might & could do if I were personally present, I hereby ratifying and confirming all the acts of my said attorney, or of his substitutes, done by virtue and in pursuance of these presents.

In testimony whereof I have hereunto set my hand and seal the 13th day of February, A. D. 1847.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
LOUIS DU PRE.

L L.—T. P. Devereux's statement of his account with Mrs. F. Devereux, referred to in report of commissioner.

Account of receipts and disbursements of T. P. Devereux, as rendered by his assignees before Mr. Commis'ioner Page.

Mrs. Frances Devereux, in ℅ with Thomas P. Devereux, trustee.

			Dr.	Cr.
1846.				
June	22	By am't due this day, as per statement made by S. W. Whiting and agreed to by her		29,664 60
		" interest to June 22nd, 1847		1,779 90
		" am't rec'd from J. Devereux on your ℅ being proceeds of crop of 1845, int. 1 year		2,256 74
		" am't rec'd from same for crop of 1846		135 30
		" " due you on account of estate of J. D., dec'd		120 95
				91 75
"	23	To cash $50; interest $2.98	52 98	
"	24	" Miss Parmelee $100; int. $5.95	105 95	
"	30	" cash $285; interest $16.17	301 67	
July	6	" cash $170; interest $9.77	179 77	
"	10	" cash $50; interest $2.85	52 85	
"	13	" M. B. Royster's note $887.14; int. $49.96	937 10	
"	17	" cash $106; interest $5.90	111 90	
"	25	" cash $52.30; interest $2.82	55 12	
Aug.	1	" cash $15; interest .80	15 80	
"	"	" bill on N. Y., Miss Ogden $150; int. $8	158 00	
"	5	" cash $32; interest $1.68	33 68	
"	24	" cash $16; interest .79	16 79	
159				
1846.				
Sept.	2	To cash for taxes $16.20; interest .79	16 97	
"	4	" cash $10; interest .52	10 52	
"	8	" cash $30; interest $1.41	31 41	
"	14	" cash $15; interest .68	15 68	
"	22	" cash $50; interest $2.25	52 25	
"	23	" cash for corn $25; interest $1.24	26 24	
"	29	" cash $15; interest .65	15 65	
Oct.	7	" cash $15; interest .62	15 62	
"	13	" Wm. Stronach $516.25	537 66	
"	15	" W. D. Cooke $50; int. $2.05; int. $21.41	52 05	
"	"	" cash $30; interest $1.22	31 22	
"	19	" Wm. Peace $747.13; int. $30.12	777 25	
		Amounts over	$3,304 13	$34,049 24
			Dr.	Cr.
1846.		Amounts brought over	$3,304 13	$34,049 24
Oct.	29	To cash to W. D. Cooke $50; interest $1.93	51 93	
Nov.	17	" " " " " " $50 " 1.78	51 78	
"	28	" " " " " " 150 " 5.07	155 07	
Dec.	7	" " " " " " 100 " 3.23	103 23	
"	18	" " " " " " 50 " 1.52	51 52	
"	26	" " " " " " 150 " 4.37	154 37	

Mrs. Frances Devereux, in account, &c.—Continued.

1847.											
Feb'y	1	" Miss Ogden's annuity			$150	"	3.50....	153	50		
"	4	" cash to W. D. Cooke & to self			$530	"	12.10....	542	10		
"	19	" cash to W. D. Cooke			$150	"	3.05....	153	05		
Mar.	10	" " " " " "			100	"	1.63....	101	63		
"	22	" " " " " "			150	"	2.25....	152	25		
Apr.	12	" " " " " "			275	"	3.16....	278	16		
"	24	" " " " " "			25	"	.23....	25	23		
"	30	" " " " " "			100	"	.85....	100	85		
May	21	" " " " " "			100	"	.50....	100	50		
"	22	" " " " " "			231.15	"	1.15....	232	30		
"	25	" " " " " "			200	"	86....	200	86		
July	7	" Mrs. F. A. Polk, in N. Y.,			225	"	.52....	225	52		
"	"	" Wm. Peace's notes,			1,545	"	31.62....	1,576	62		
"	8	" W. D. Cooke, cash,			200	"	.43....	200	43		
"	21	" cash to Mrs. C. A. Edmonston, Feb'y 15th, 1846; int. 16				30 paid	2.40....	32	40		
"	21	" your ½ balance due the ex't'rs of John Devereux, dec'd, $1,772.65; int. from Jan. 1st, '46, com'd, 159.95						1,932	60		
		" your ½ of stock, valued by G. W. Mordecai, $1,684.19; int. from Jan., 1845, comp'd, $262.16						1,946	35		
"	"	By deductions from cost of graveyard as awarded by Messrs. Baker & Whiting, $1.25....									
		" int. from 29th Sept., 1839, comp'd, 68.41....									193 41
		" cash charged you as paid C. M. Clark, as per award of Mess. Baker & Whiting, $559.42; int. from Sept. 29th, 1839, comp'd, 307.12..									866 12
		Balance carried over, due June 22nd, 1847.						23,282	39		
								$35,108	77	$35,108	77

			Dr.	Cr.
1847.				
June	22	Amount brought over.....		$23,282 39
July	1	To balance due Wm. Peace $11 33; int. .66, vou. Jan'y 7.....	$11 99	
Sept.	2	" L. Hinton's note $522.80; interest $25.25....	548 05	
July	26	" cash to W. D. Cooke $100; interest $5.48....	105 48	

160

1847.								
Aug.	12	To cash to W. D. Cooke,	50;	interest	2.53..	52	53	
"	17	" " " " " "	75	"	3.81..	78	81	
"	28	" " " " " "	50	"	2.45..	52	45	
Sept.	2	" " " " " "	200	"	9.66..	209	66	
"	10	" 2 cheeses in N. Y.,	8.33	"	37..	8	70	
Oct.	5	" cash to W. D. Cooke,	75	"	3.21..	78	21	
"	11	" " " " " "	100	"	4.19..	104	19	
"	23	" " " " " "	75	"	3.00..	78	00	
"	26	" " " " " "	175	"	6.20..	181	20	
Nov.	9	" cash,	100	"	4.70..	104	70	
"	12	" cash to W. H. Haywood, jr.,	200	"	7.33..	207	33	
"	13	" Geo. Sanders' note,	213.33	"	7.78..	221	11	
"	13	" James D. Nunn's note,	1,071.27	"	39.09..	1,110	36	
"	20	" cash to W. D. Cooke,	60	"	2.10..	62	10	
"	23	" " " " " "	50	"	1.73..	51	73	
"	14	" E. Colburn,	13.33	"	40..	13	73	
"	29	" cash to W. D. Cooke,	115	"	3.86..	118	86	
Dec.	24	" " " " " "	150	"	4.45..	154	45	
"	29	" " " " " "	150	"	4.34..	154	34	
1848.								
Jan'y	3	" " " " " "	200	"	5.60..	205	60	
"	11	" " " " " "	100	"	2.66..	102	66	

Mrs. Frances Devereux, in account, &c.—Continued.

"	15	"	cash to Mrs. Fuller,		50	"	1.30..	51 30		
"	25	"	" " W. D. Cooke,		100	"	2.43..	102 43		
"	28	"	" " " " "		50	"	1.20..	51 20		
Feb'y	1	"	" " " " "		40	"	93..	40 93		
"	5	"	" " " " "		50	"	1.12..	51 12		
"	11	"	" " " " "		75	"	1.62..	76 62		
"	14	"	" " " " "		40	"	84..	40 84		
"	22	"	" " " " "		150	"	2.97..	152 97		
"	26	"	" " " " "		50	"	95..	50 95		
			Amounts forward.....				.....	$4,634 60		$23,282 39
1848.								Dr.		Cr.
			Amounts forward.....				.....	$4,634 60		$23,282 39
Mar.	15	To cash W. D. Cooke, $100; interest, $1.60.....						101 60		
"	18	"	" " " "		200	"	3.10.....	203 10		
"	20	"	" " " "		200	"	3.03.....	203 03		
"	22	"	" " " "		202.50	"	3.03.....	205 53		
"	27	"	" " " "		100	"	1.40.....	101 40		
Apr.	1	"	" " " "		50	"	67.....	50 67		
"	17	"	" " " "		125	"	1.33.....	126 33		
"	27	"	" " " "		500	"	5.00.....	505 00		
"	26	"	" " " "		150	"	1.37.....	151 37		
May	1	"	" " " "		450	"	3.82.....	453 82		
"	13	"	" " " "		150	"	92.....	150 92		
June	10	"	Mr. Cassady,		100	"	18.....	100 18		
"	20	"	D. L. Swain for taxes.....					4 60		
"	22	By interest on $23,282.39 one year.....						.....		1,396 92
			Balance carried over.....					17,687 16		
								$24,679 31		$24,679 31
161										
1847.		To cash paid Miss Ogden $150								
Aug.	15	" int. 10 months 6 days 7 65								
							$157 65			
1848.		" cash paid Miss Ogden..... $150								
Feb'y	15	" int. 4 months 6 days 3 15								
							$153 15			
							$310 80			
		True balance, deducting omitted items.....						$17,376 36		
June	22	By balance due this day.....						.....		$17,376 36
		" interest one year						.....		1,042 58
		To cash to Mrs. Fuller, Jan'y, 1847, $50; int., $4.42						54 42		
		" " " W. D. Cooke, June 21st, 1848, $150; int., $9.00						159 00		
July	5	" " " Mrs. Fuller, $15; int., $ .85.....						15 85		
"	10	" " " " Lacy, 75; " 3.73.....						78 73		
"	13	" " " " Fuller, 15; " .84.....						15 84		
"	13	" " for meal, 6; " .33.....						6 33		
"	15	" " to W. D. Cooke, $177.73; int., $9.95....						187 68		
"	21	" " Terrell, Johnson & Terrell, $12.28; int., .66						12 94		
"	31	" " to Mrs. Fuller, 30; int. 1.60.....						31 60		
Aug.	2	" " " W. D. Cooke, 5; " .26.....						5 26		
"	7	" " " Mrs. Fuller, 50; " 2.63.....						52 63		
"	15	" " Miss Ogden, 150; " 7.65.....						157 65		
"	21	" " Mrs. Fuller, 25; " 1.25.....						26 25		
"	28	" " W. D. Haywood, 9.50; " .46.....						9 96		
Sept.	1	" " Mrs. Fuller, 25.00; " 1.20.....						26 20		
"	7	" " J. Primrose, 158.38; " 7.37.....						165 75		
"	15	" " for books E. P. Jones, $1.75; int., .07..						1 82		

Mrs. Francis Devereux, in account &c.—Continued.

" 15	" "	Mrs. Fuller, 25; int., $1.14	26 14	
" "	" "	groceries in N. Y., $67.29		
" "	" "	Miss Maitland, for books, 4.00—$71.29; int., 3.26	74 55	
Oct. 1	" "	Mrs. Fuller, $25; int., $1.08	26 08	
" 3	" "	F. H. Briggs, 137.75; " 5.89	143 64	
" 9	" "	chairs for cleaning well, 2.00; int., .08	2 08	
" 9	" "	Waltering's bill, $12 89; int., .54	13 43	
" 17	" "	bill on N. Y. (S. M. Chester), $11.00; int., .45	11 45	
" 17	" "	J. M. Towles, 25.00; int., 1.03	26 03	
" 7	" "	Mr. Lacy, 50.00; " 2.11	52 11	
" 16	" "	Mrs. Fuller, 80; " 3.40	83 40	
		Amounts forward	$1,466 82	$18,418 94
1848.		Amounts over	$1,466 82	$18,418 94
Oct. 17	To cash to Mrs. Fuller,	$25; int., $1.01	26 01	
Nov. 13	" " " " "	50; " 1.81	51 81	
Dec. 1	" " " " "	50; " 1.66	51 66	
" 15	" " " " "	50; " 1.55	51 55	
162				
1849.				
Jan'y 1	To cash to Mrs. Fuller,	50; int., 1.41	51 41	
" 15	" " " " "	50; " 1.30	51 30	
" 25	" " " " "	80; " 1.94	81 94	
" "	" "	taxes, 13.36; " .31	13 67	
" 26	" "	Brown & Hinton, 32.06; " .77	32 83	
" "	" "	J. M. Towles, 50.68; " 1.20	51 88	
" 27	" "	Jesse Brown, 24.54; " .57	25 11	
" 30	" "	Mrs. Fuller, 50; " 1.17	51 17	
Feb'y 15	" "	" " 50; " 1.05	51 05	
" "	" "	Miss Ogden, 150; " 3.15	153 15	
Mar. 1	" "	Mrs. Fuller, 50; " .91	50 91	
" 15	" "	" " 50; " .80	50 80	
" 10	" "	box of wine, 25; " .40	25 40	
" 19	" "	G. W. Mordecai, 400; " 7.32	407 32	
" 30	"	Mrs. Fuller 50; " .66	50 66	
Apr. 7	" "	C. T. Haigh & Son, 24.47; " .29	24 76	
" 9	" "	Mr. Lacy, 50; " .60	50 60	
" 15	" "	Mrs. Fuller, 50; " .55	50 55	
" 25	" "	E. Colburn, 84; " .78	84 78	
May 1	" "	Mrs. Fuller, 50; " .42	50 42	
" 15	" "	" " 50; " .30	50 30	
June 21	" interest paid E. Colburn		9 25	
	Balance due by T. P. Devereux, June 22nd, 1849.		15,301 83	
			$18,418 94	$18,418 94

H. H.—Statement of account with Mrs. F. Devereux, by S. W. Whiting, adm'r, referred to in report of commissioner.

Account of receipts & disbursements of S. W. Whiting, adm'r, as rendered by assignees in bankruptcy, of T. P. Devereux, before Mr. Commissioner Page.

Estate of Mrs. Frances Devereux, in ℅ with S. W. Whiting, administrator.

		Dr.	Cr.
1849.			
June 22	By amount due from T. P. Devereux		$15,301 83
"	" interest one year		918 10
"	" amount rec'd from J. Devereux crop of 1848		1,139 00
"	" interest 1 year		68 34
	To am't of legacy left T. P. D. in trust, $7,500; int., $450	7,950 00	
"	" " " " " Ral. Ben't Soc'y, $500; " $30	530 00	
"	" " " " " Rob't Souter, 500; " 30	530 00	
" 18	" " E. Card, $2.50; interest, .15	2 65	
" 28	" " Mrs. Fuller, 65.00; " $3.65	68 65	
July 7	" " Benj. Perry, 34.60; " 1.98	36 58	
Aug. 15	" " E. Colburn, 200.00; " 10.26	210 26	
" 29	" " W. Thompson, 35.35; " 1.90	37 25	
" 27	" " John King, 10.00; " .54	10 54	
" 30	" " Wm. Thompson, 7.50; " .40	7 90	
Sept. 1	By sale of horses, 45.00; " 2.08		47 08
" "	To cash paid J. Woltering, 12.89; " .65	13 54	
" 3	" " " J. Primrose, 82.78; " 4.38	87 16	
" 8	" " " Jesse Brown, 17.36; " .90	18 26	
Oct. 8	" " " H. J. Patterson, 25.00; " 1.07	26 07	
" 13	" " " J. Woltering, 26.27; " 1.08	27 35	
163			
1850.			
Jan'y 1	By rent of land & sale of stock, 2,840,78, "81.39		2,922 17
" 5	To cash paid K. Jones, $40.32, "1.12	41 44	
" 8	" " " E. Smith, 14.89, " .39	15 28	
" 11	" " " J. M. Towles, 34.05, ".92	34 97	
" 12	" " " W. Strarach, 181.81, "3.93	185 74	
" 28	" " " J. R. Harrison, 4.50 ".10	4 60	
" 24	" " " Hayward & Williams, $54.32, int. 1.33	55 65	
" 29	" " " Peebles, White & Davis, 1.81, ".04	1 85	
" 31	" " " pastor's salary, 50.00, "1.19	51 19	
Feb'y 14	" " " Crocker & Dudley, 2.50, ".05	2 55	
Mar. 1	" " " W. J. Clark, 33.57, ".62	34 19	
1849.			
Sept. 1	" " " copying will, 25.00, "1.29	26 29	
	Balance forward	10,386 56	
		20,396 52	20,396 52
		Dr.	Cr.
1850.			
June 22	By balance forward, $10,386.56; int., 623.29		11,009 85
"	To am't paid Caldwell Institute, legacy Jan'y 1st, 1850, and omitted, $4,000; int., 5 M. 22d, 126.66	4,126 66	
Aug. 1st	To cash paid Mrs. Hall, $2.00; int., .10	2 10	
Sept. 28	" " " board of education legacy	4,000 00	
	Int. to June 22nd, 1851	196 00	
Oct. 1st	" " Board Home Missions	4,000 00	
	Interest	194 66	
Dec. 24	" " J. McKimmon, $18.01; int., .54	18 55	
1851.			
Jan'y 1st	By hire of Delia, $13; int., .36		13 36
" "	" " " negroes, 83.75, "2.30		86 05

Estate of Mrs. Frances Devereux in account, &c.—Continued.

" "	" " " Tom and Viney, $70; int., 2.10		72 10
" 23	To cash paid Bennett T. Blake, $10; int., 25	10 25	
Feb'y 10	" " " W. Putney, taxes 17.28, " .37	17 65	
" 25	" " " Williams and Haywood, 2.75 " .10	2 85	
June 21	" " " taxes	8 10	
	To balance debit of estate		1,395 46
		$12,586 82	$12,586 82
1851.			
June 22	To balance forward	1,395 46	
	Interest 1 year	83 70	
Nov. 4	To cash paid legacy, Board Foreign Missions	4,000 00	
	Int. to June 22, 1852, 7 mos. 18 d'ys	152 00	
Aug. 1	To cash paid Dr. Johnston, $15, int. .76	15 76	
" 15	" " " " Haywood, 617.00, " 31.55	648 55	
" "	" " " E. Colburn's note, 522.50, " 25.64	548 14	
" "	" " " Wm. Murdock's " 522.50, " 25.64	548 14	
" "	" " " " " " 522.50, " 25.64	548 14	
" "	" " " Mary R. Wheaton, 303,36, " 15.41	318 77	
1852.			
Jan'y 1	By hire of Delia, $25; Betsey, $25; Tom and Viney, $80; negroes to J. Devereux, $150 = 280; int., $8.02		288 02
	Balance to debit		7,970 74
		$8,258 76	$8,258 76
164			
1852.		Dr.	Cr.
June 22	To balance to debit, $7,970.74; int., 1 y'r, $478.24	8,448 98	
1853.			
Jan'y 1	" support of negroes, 97.00, " 2.77	99 77	
" "	By hire of Delia, $27; Tom & Viney, $75; negroes to J. Devereux, $150=$252; int., $7.22		259 22
Feb'y 23	To cash paid R. P. Finch, $88.13; int., 16	88 29	
April 28	" " " Haywood & Williams, 2.50, " .03	2 53	
June 22	" " " Adam, sundries, $44.92	44 92	
" "	" " " W. J. Clark	84 38	
" "	" " " church in Pittsboro'	25 00	
" "	" " " Tom March	30 00	
" "	" " " Patsey Simpson	12 00	
" "	" " " sh'ff of Wake, taxes for 1848	13 36	
" "	" " " Martha Simpson	11 73	
" "	" " " E. Colburn for interest	67 40	
" "	" " " sh'ff Bertie, taxes for 1849	129 52	
" "	" " " support women & child'n, 2 y'rs	180 00	
" "	" " " Mrs. Wheaton, interest	46 56	
	Balance to debit, June 23rd, 1853		9,025 22
		$9,284 44	$9,284 44
Dec. 24th,	1858, T. P. Devereux paid the Union Theological Seminary their legacy	$4,000 00	
	Balance to debit as above	9,284 44	
	Amount paid over and above assets	$13,284 44	

Exhibit F F, with report of commissioner.

Account current of Thomas P. and John Devereux, jr., executors of John Devereux, sr., deceased.

165 DR. *The estate of John Devereux, dec'd, in account with Thomas P. and J. Devereux, executors.* CR

1844.				Int.	Prin.
July	1	To cash,	Wm. Smith	$ 09	$1 00
"	6	" "	Wm. Thompson	7 67	86 00
"	15	" "	J. Primrose	4 26	48 71
"	19	" "	J. M. Towles	1 62	18 75
"	26	" "	Brown & Hinton	3 27	38 20
"	"	" "	Williams & Haywood	2 65	30 95
"	27	" "	J. McKimmon	28	3 40
"	29	" "	Wm. Holeman	62	5 00
Aug.	12	" "	T. Y. Scott	61	7 00
"	"	" "	Smith & Buffaloe	66	7 93
"	23	" "	R. R. Smith	75	9 23
"	24	" "	W. S. Whitaker	9 74	120 00
"	26	" "	County taxes	87	10 85
"	28	" "	J. D. Newsom	63	7 86
Sept.	1	" "	W. W. Clark	9 37	120 66
"	23	" "	C. R. Root	82	10 75
"	28	" "	Bertie taxes	13 60	177 50
Nov.	4	" "	Blankets (P. & M.)	13 09	191 34
Dec.	20	" "	A. Bishop	24	4 00
"	20	" "	Bagging (R. & M.)	15 02	243 26
"	21	" "	J. L. & R. W. Hyman	3 95	64 16
1845.					
Jan'y	1	" "	Ditta	3 25	53 90
"	"	" "	Elisha Ryan	27 19	453 22
"	"	" "	John Gammon	14 87	247 90
"	28	" "	Asa Jones	77	14 00
Feb'y	16	" "	A. Craig	4 57	88 00
Mar.	7	" "	Yates & Sutton	1 17	24 00
"	1	" "	Ryan & Maitland	15 32	312 65
"	11	" "	Grimes & Son	28	5 81
May	20	" "	Willis Smith	38	8 00
"	22	" "	J. Waddel	33	9 05
June	4	" "	W. R. Clark	2 96	81 27
"	"	" "	Silas Burns	52	15 17
"	25	" "	Dr. Cobb	16	4 75
July	14	" "	C. W. D. Hutchins	83	26 95
"	31	" "	Lewis Thompson	4 23	152 00
Aug.	8	" "	Stith & Pescud	12	5 00
Sep.	15	" "	Turner & Hughes	45	18 88
"	20	" "	McFarland & Co	3 53	201 67

1844.		Int.	Prin.
Nov.	25	By sales land in Tennessee	79 43	1, 206 63
		By stock of tools, &c., per M. Mordecai's valuation	303 29	5, 054 88
		Sales of corn in N. Y.	23 75	471 86
	12	Do. do.	54 40	1, 129 46
	18	Old horses	2 45	52 00
		Cotton in New York	167 70	3, 099 43
April	8	Corn in New York	28 00	641 35
June	11	" Charleston	35 35	1, 065 78
July	26	Land in Tennessee	7 73	300 00
May	21	Corn in Chatham	30 08	1, 378 10
Sep.	12	Corn Charleston	38 52	2, 139 80
"	18	"	18 22	1, 072 45
"	28	Bacon, Norfolk	4 26	207 70
		Amount due estate by T. P. Devereux		7, 056 59
			$793 19	$25, 476 07

Exhibit F F, with report of commissioner—Continued.

166 DR. *The estate of John Devereux, dec'd, in account with Thomas P. and J. Devereux, executors.* CR.

" 29	" " Jas. Gomant & Co	30 20	1,812 37				
Oct. "	" " Bertie taxes	2 54	168 15				
1845.							
Oct. 29	To cash, sundry debts p'd by P. D		19 70				
Nov. 30	" " Wake taxes, 1844		10 85				
1844.	" " Gabiel expenses	3 31	51 00				
			4,991 24				
1845.							
Oct.	To cash p'd J. R. Justice	20 44	2,493 96				
	" " " Jas. Lenox	787 26	9,757 52				
	" " " estate M. Griffin, p'r statement J. M. Roberts	699 42	11,657 16				
	To cash note & acceptance	232 02	} 2,500 00				
	In Bank of the State	1,950 01	}				
			37,409 88	1846.			
1846. Jan. 1	Balance interest		1,156 82	Jan'y 1	By bal. due exec't'rs		7,090 65
			32,566 70				32,566 70
1846. Jan.	Balance due executors		$7,090 63			16 30	
1836.				1836.		4 00	
July 8	Paid Dr. F. J. Haywood	8 69	152 00	July 26	Cash for land from McClennahan		300 00
Aug. 10	" E. Griffin	1 50	22 00	Aug. 25	Do. do.		400 00
Oct. 24	" T. H. Snow	52	15 64		Bal. due executors		$6,818 84
	Sundry services p'd by me, F. Devereux, 1845 $9,522						
	Services heretofore charged 1,970	9 16	75 52				
Oct. 13	W. Stronach, tombstone	6 48	157 00				
	To bal. int. account		6 05				
		26 35	7,518 84				$7,518 84
	To bal. due executors		6,818 84				

S. W. WHITING.

W. DEVEREUX, J. DEVEREUX, *Executors.*
AUGUST, 1847.

Wake County—August term, 1847.

The foregoing account was, on oath, returned into court and ordered to be recorded.

JAMES T. MARRIOTT, *C. C.*

167 Wake County, superior court.

I, J. N. Bunting, clerk of the superior court of Wake County, do certify that the foregoing is a true and perfect copy of the account of the estate of John Devereux, deceased, as appears of record in my office, in record book B. B., pages 266 and 267.

In witness whereof I have hereunto set my hand and affixed the seal of my office, at office in Raleigh, this the 29th day of November, 1873.

[SEAL.] J. N. BUNTING, *Clerk.*

Ledger, with report of commissioner.

Account-book offered in evidence by assignees in bankruptcy of T. P. Devereux.

Frances Devereux in account in with T. P. Devereux.

1840.	Page 18 of ledger:	Dr.	Cr.
April 15th	By amount of charge on the property of T. P. Devereux		$50,000 00
" "	Interest for one year, ending April 15th, 1841		3,000 00
			53,000 00
" "	To cash advanced at sundry times, from July, 1839, to April, 1840	$4,099 45	
" "	To equalized interest, say 18 months	368 19	
July 1st	Cash, $175.00, interest to April 15th, 1841, $7.87	182 87	
" "	To cash before Uncle P.'s death	200 00	
" "	" interest, say two years	24 00	
Oct. 23d	" cash to my father	300 00	
" "	" interest to April 15th, 1841	9 00	
" "	" cash, $700, interest as above, $21	721 00	
Nov. 1st	" cash to Miss O. and Mrs. R	225 00	
" "	" interest, as above	5 62	
" "	" ½ cost of burying-ground	333 00	
" "	" interest for 1 year, 6 months	29 90	
1841.			
Jan'y	" value of carriage	600 00	
" "	" interest to April 15th, 1841	9 30	
Febr'y	" cash to Mrs. R	75 00	
" "	" interest, as above	1 12	
	Total	7,183 45	
	Balance due F. Devereux April 15th, 1841		$45,816 55

1841.	Page 19 of ledger:	Dr.	Cr.
April 15th	By balance due F. Devereux		$45,816 55
	Interest to April 15th, 1842		2,748 99
			$48,565 54
" "	To cash for Booker $1,000, in't $60	1,060 00	
May 1st	" cash to Miss O. and Mrs. R	225 00	
" "	" interest to April 15th, 1842	13 50	
" 15th	" cash, by John	150 00	
" "	" interest, as above	8 25	
Aug. 30th	" cash to you, $200; int., as above, $7.50	207 50	
Sept. 6th	" cash paid Bank of Cape Fear	501 00	
" "	" interest, as above	20 00	
Oct. 15th	" cash paid Mrs. Sooler for McNeil	350 00	
" "	" interest, as above	10 50	
" 23d	" cash paid W. F. Clark	318 00	
" "	" interest, as above	9 50	
Nov. 1st	" cash to Miss O. and Mrs. R	225 00	
" "	" interest, as above	5 62	
" "	" cash paid McNeil	35 00	
" "	" interest, as above	87	

168 *Frances Devereux in account, &c.*—Continued.

1842.				
Mar.	12th.	To cash to Mr. Witherspoon	765 00	
"	"	" interest as above	3 82	
April	"	" cash paid you for Miss Willie	300 00	
				$44,356 98
		Total	$4,208 56	
		Balance due F. Devereux, April 15th, 1842		
1842.		Page 20 of ledger:	Dr.	Cr.
April	15th	By balance brought over		$44,356 98
		Int. for one year, to April 15th, 1843		2,661 42
				$47,018 40
"	"	To this sum allowed T. P. D., in consequence of loss of ¼ Trent land	$4,000 00	
"	"	" interest thereon compounded from April 15th, 1839—say 4 years. (The interest is compounded because it has heretofore been allowed and paid to Mrs. D.)	1,048 82	
"	"	" my bond to Mrs. S. E. Devereux, given by your direction	5,000 00	
"	"	" interest from Feb'y 26th, 1842—say one month nineteen days	20 40	
May	2nd	" ½ annuity to Mrs. R	75 00	
"	"	" interest to April 15th, 1843	4 25	
"	30th	" cash to Bank of Cape Fear	78 80	
"	"	" interest as above	4 15	
Aug.	4th	" cash to Miss O	150 00	
"	"	" ½ annuity to Mrs. R	75 00	
"	"	" cash to Mr. S. E. D. for Miss Willie	50 00	
"	"	" interest as above, on the three items	11 50	
"	25th	" cash for Mrs. Scott	25 00	
"	"	" interest as above	95	
Sept.	2nd	" cash to Mrs. Hooper	100 00	
"	"	" interest as above	3 60	
"	5th	" cash to White and to Parliment Butts	31 20	
"	"	" interest as above	1 13	
		Carried over	$10,679 80	
1842.		Page 21 of ledger:	Dr.	Cr.
		By balance on other side		$47,018 40
		To amount brought forward	$10,679 80	
Oct.	6th	" cash to Mr. Nunn, for lumber	170 00	
"	"	" interest as above	5 35	
"	21st	" cash, $50; int. as above, $1.45	51 45	
"	22nd	" cash in Bank of Cape Fear	228 00	
"	"	" interest as above	6 58	
Nov'r	8th	" cash to Mrs. R	75 00	
"	"	" interest as above	2 44	
"	14th	" cash for parsonage	130 00	
"	"	" interest as above	3 25	
Dec.	6th	" cash for parsonage	100 00	
"	"	" interest as above	2 15	
1843.				
Jan'y	5th	" cash, $100; interest, $1.88	101 88	
Feb'y	7th	" cash, $100; interest, $1.12	101 12	
"	22nd	" cash, $150; interest, $1.28	151 28	
"	"	" cash to Miss O	150 00	
"	"	" interest as above	1 28	
Mar.	9th	" cash to J. Day for locks	79 00	
"	"	" interest as above	45	
		Total	$12,979 03	
		Balance due F. Devereux April 15th, 1843		$34,979 37

169 *Frances Devereux, in account, &c.*—Continued.

			Dr.	Cr.
1843.		Page 22 of ledger:		
April	15th	By balance brought over		$34,979 37
"	"	" interest for one year		2,098 74
				37,078 11
July	4	To cash to Williams for Ham'l	60 00	
"		" interest, 9 mo's and 12 days	2 82	
"	9	" cash to you	250 00	
"	"	" int., 9 months and 7 days	11 55	
"	25	" cash for parsonage	50 00	
"	"	" int., 8 months 20 days	2 16	
Aug.	1	" cash to Miss O	150 00	
"	"	" int., 8 months 15 days	6 37½	
"	23	" cash to C. H. Johnson	417 75	
"	"	" int., 7 months 23 days	14 12	
"	24	" cash to D. Ruth	79 38	
"	"	" int., 7 months 22 days	2 68	
"	31	" cash to J. Brown, $37.10		
"	"	" do. " Towles, 56.00	93 10	
"	"	" int., 7 months 15 days	2 49	
Sept.	2	" cash to Bank of Cape Fear	200 00	
"	"	" int., 7 months 13 days	7 43	
"	11	" cash to yourself	45 00	
"	"	" int., 7 months 4 days	1 60	
Oct.	16	" cash for monument	992 00	
"	"	" int., 6 months	29 76	
"	"	" cash by Mrs. D., in New York	39 51	
"	"	" interest, 6 months	1 18	
"	17	" cash to yourself	25 00	
"	"	" int., 6 months	75	
Nov.	20	" cash to yourself	150 00	
"	"	" int., 4 months 26 days	4 30	
		" carried over	$2,638 95½	
		Page 23 of ledger:	Dr.	Cr.
		By balance on other side		$37,078 11
1844.		To amount brought over	$2,638 95½	
Jan'y	1st	" cash to you'self	100 00	
"	"	" int., 3 months 15 days	1 75	
"	30	" cash to you'self	150 00	
"	"	" int. for 2 months 15 days	3 37½	
Feb'y	1st	" cash to Miss O	150 00	
"	"	" int., 2 months 15 days	3 37½	
Mar.	18	" cash to you'self	500 00	
"	"	" int., 28 days	2 37½	
April	15	" your share of fee paid Dr. Metamer, Oct. 28th, 1842, and unsettled heretofore	100 00	
"	"	" int., 1 year 5 months 17 days	8 75	
		Total	$3,658 58	
		" balance due F. Devereux April 15th, 1844		$33,419 53
1844.		Page 26 of ledger:	Dr.	Cr.
April	15th	By balance brought forward		$33,419 53
"	"	" int. due April 15th, 1845		2,005 17
				$35,424 70
May	1st	To Jas. H. Selby	$15 75	
"	"	" cash	10 00	
"	"	" int., say 11 months 15 days	1 48	
"	2	" cash	25 75	
"	"	" int., 11 months 14 days	1 46	

170 *Frances Devereux, in account, &c.*—Continued.

July	6	To cash	40 00	
"	"	" int., 9 months 10 days	1 86	
"	15	" cash	27 00	
"	"	" int. 9 months	1 21	
"	19	" Richard Smith	26 62	
"	"	" int., 8 months 25 days	1 16	
Aug.	1	" bill on New York	150 00	
"	"	" int., 8 months 15 days	6 37	
"	5	" cash	25 00	
"	"	" int., 8 months 10 days	1 04	
"	"	" sundries	26 56	
"	"	" int., 8 months 10 days	1 11	
"	24	" John Primrose	23 00	
"	"	" int., 7 months 21 days	88	
"	26	" bill on New York	120 00	
"	"	" int., 7 months 19 days	4 67	
"	27	" cash	20 00	
"	"	" int., 7 months 18 days	72	
Sept.	3rd	" Towles for corn	6 97	
"	"	" int., 7 months 12 days	25	
"	7th	" E. P. Jones	25 00	
"	"	" int., 6 months 8 days	90	
			$564 76	

1844.		Page 27 of ledger:	Dr.	Cr.
		By amount brought over		$35,427 70
		To amount brought forward	$564 76	
Sept.	4	" S. E. Devereux	50 00	
"	"	" int., months 11 days	1 78	
"	14	" Williams and Haywood	15 50	
"	"	" int., 7 months	54	
"	21	" cash	20 00	
"	"	" int., 6 months	67	
"	25	" Henry (wages)	12 00	
"	"	" int., 6 months, 20 days	38	
"	30	" cash	25 00	
"	"	" int., 6 months 15 days	83	
Oct.	3	" cash	20 00	
"	"	" int., 6 months 12 days	64	
"	10	" cash	10 00	
"	"	" int., 6 months 5 days	32	
"	12	" S. Mordecai	16 36	
"	"	" int., 6 months 3 days	50	
"	14	" cash	25 00	
"	"	" int., 6 months 1 day	75	
"	18	" expenses to Philadelphia	316 70	
"	"	" int. 5 months, 27 days	14 99	
"	19	" cash	50 00	
"	"	" int., 5 months 26 days	1 47	
Nov.	1st	" John Primrose	36 35	
"	"	" int., 5 months 15 days	97	
"	20	" cash	200 00	
"	"	" int., 4 months 25 days	4 84	
			$1,390 35	

1844.		Page 28 of ledger:	Dr.	Cr.
		By amount brought over		$35,424 70
		To amount brought forward	$1,390 35	
Nov.	21	" cash	26 56	
"	"	" int., 4 months 24 days	64	
"	23	" James D. Nunn	47 37	
"	"	" int., 4 months 22 days	1 09	
"	"	" fodder, wood, peas, &c	61 00	

171 *Frances Devereux, in account, &c.*—Continued.

Nov.	23	To int., 4 months 25 days	1 46	
Dec.	10	" cash	50 00	
"	"	" int., 4 months 5 days	1 05	
1845.				
Jan'y	1st	" J. Primrose	40 07	
"	"	" H. Patterson	18 00	
"	4	" Miss Melisha Cash	30 00	
"	"	" Silas Burns	2 77	
"	7	" pump	36 50	
"	"	" 3 months 18 days	2 29	
Feb'y	1st	" John Primrose	213 12	
"	"	" int., 2 months 15 days	2 66	
"	9	" J. Primrose	46 00	
"	"	" int., 3 months 8 days	92	
"	14	" bill of New York	100 00	
"	"	" int., 2 months 1 day	1 00	
"	24	" bill on New York	150 00	
"	"	" int., 1 month 22 days	1 30	
"	27	" J. Primrose	225 88	
"	"	" int., 1 month 18 days	1 79	
Mar.	3	" J. Primrose	60 00	
"	"	" int., 1 month 12 days	42	
			$2,512 24	
		Page 29 of ledger:	Dr.	Cr.
		By amount brought over		$35,424 70
1845.		To amount brought forward	$2,512 24	
Mar.	8	" J. Primrose	20 00	
"	"	" int., 1 month 7 days	12	
"	25	" J. Primrose	100 00	
"	"	" int., 20 days	35	
April	2	" J. Primrose	125 63	
"	"	" int., 13 days	27	
"	12	" bill on New York	113 00	
"	"	" piano	486 26	
"	"	" int., 3 days	30	
			$3,358 15	
		By balance due April 15th, 1845		$32,066 55
		" interest to June 21st		352 73
May	2	To J. Primrose	$283 86	
"	"	" int., 1 month 21 days	1 52	
"	18	" J. Primrose	16 60	
"	"	" int., 1 month 15 days	12	
June	2	" J. Primrose	114 88	
"	"	" int., 21 days	42	
"	12	" self, for Mr. Cook	60 00	
"	"	" int., 13 days	12	
			$477 52	
		" balance due June 21st, 1845		$31,941 78
		By balance brought down		$31,941 78
		" John Devereux's estate		8 70
		" do. do.		11 00
		Page 30 of ledger.	Dr.	Cr.
1845.		By amount brought forward		$31,941 78
June	21	Interest, 1 year		1,916 50
		By sundry small items against the estate of J. Devereux, viz:		
		Paid Mrs. S. E. Devereux $11 71		
		" " A. M. Devereux 19 51		

172 *Francis Devereux, in account, &c.*—Continued.

		W. Rogers, for wood	51 00		
		Langdon Buller	13 00		
			$95 22		
		Less your ℔	23 80		71 42
June	23	To J. Primrose		$20 00	
"	"	" int., 11 months 28 days		1 19	
July	1st	" J. Primrose		85 89	
"	"	" interest		5 00	
"	8	" cash, $10; int., .57		10 57	
"	9	" C. T. Haigh, $21.71; int., $1.23		22 94	
"	10	" cash, $35.00; int., $1.99		36 99	
"	19	" C. F. Haigh, $15.88; int., .87		16 75	
Aug.	1	" J. P——e, $97.26; int., $5.18		102 44	
"	13	" Miss Ogden, $150; int., $7.70		157 70	
Sep.	4	" cash, $10; int., .48		10 48	
"	6	" J. P——e, $87.58; int., 4.15		91 73	
"	"	" cash, $100; int., 4.75		104 75	
"	13	" Snow's bill, $13.18; int., .63		13 81	
"	20	" cash, $30; int., 1.35		31 35	
"	30	" cash, $20; " .87		20 87	
Oct.	6	" J. P——e, $30.15; int., $1.28		31 43	
"	16	" cash, $200; int., $8.16		208 16	
Nov.	4	" J. P——e, $76.73; int., $2.91		79 63	
"	"	" cash, $100; int., $3.80		103 80	
		" amounts carried over		$1,155 49	$33,929 70
		Page 31 of ledger:		Dr.	Cr.
		Am't brought over			$33,929 70
		" " "		$1,155 49	
Nov.	8	To cash, $200; int., $7.43		207 43	
"	17	" J. P——e, $60; int., 2.14		62 14	
Dec.	1	" J. P——e, 106.26; int., 3.52		109 78	
"	4	" J. P——e, 34.72; int., 1.14		35 86	
"	25	" cash, $800; int., 23.60		823 60	
1846.					
Jan.	1	" J. P——e, $149.29; int., 4.27		153 56	
Feb'y	2	" J. P——e, 103.08; int., 2.37		105 45	
"	"	" cash, 100.00; int., 2.30		102 30	
"	4	" cash, 200.00; int., 4.60		204 60	
"	23	" cash, 400.00; int., 7.86		407 86	
"	28	" Miss Ogden, 150.00; int., 2.85		152 85	
Mar.	2	" J. P——e, 70.46; int., 1.27		71 73	
"	30	" cash, 500.00; int., 6.83		506 83	
Apr.	1	" J. P——e, 156.62; int., 2.11		158 73	
"	24	" cash, 250.00; int., 1.37		251 37	
May	1	" J. P——e, 143.11; int., 1.21		144 32	
June	1	" J. P——e, 109.54; int., .36		109 90	
"	"	" J. P——e, for taxes, 12.60; int., .04		12 64	
"	13	" cash, $20.00; int., .02		20 02	
"	"	" cash, 106.00; int., .14		106 14	
"	16	" cash, 27.12; int., .02		27 14	
"	19	" cash, 25.00		25 00	
		" balance due June 21st, 1846		28,974 96	
				33,929 70	$33,929 70
		By *by* balance brought down, cash Feb., 1846, to C. A. Edmonston omitted		30 00	
		Page 32 of ledger:		Dr.	Cr.
		By amount due June 22nd, 1846, as per Mr. Whiting's statement			$29,664 60

173 *Frances Devereux, in account, &c.*—Continued.

		By interest one year		1,779 90
		" amount due for crop of 1845, as per J. Devereux's account		2,256 74
		" interest one year		135 30
		" amount due for crop 1846		120 95
		" due on account of estate of J. Devereux		91 75
June	23	To cash $50, int. $2.96	$52 98	
"	24	" Miss Parmelee $100, int. $5.95	105 95	
"	30	" cash $285, int. $16.67	301 67	
July	6	" cash 170, int. 9.77	179 77	
"	10	" cash 50, int. 2.85	52 85	
"	13	" M. B. Royster $887.14, int. $49.96	937 10	
"	17	" cash $106, int. 5.90	111 90	
"	25	" cash $52.30, int. $2.82	55 12	
Aug.	1	" cash 15, int. .80	15 80	
"	"	" bill on N. Y. $150, int. $8	158 00	
"	6	" cash $32, int. $1.68	33 68	
"	24	" cash $16, int. .79	16 79	
Sept.	2	" taxes 16.20, int. .77	16 97	
"	4	" cash $10, int. .52	10 52	
"	8	" cash $30, int. 1.41	31 41	
"	14	" cash 15, int. .68	15 68	
"	22	" cash $50, int. 2.25	52 25	
"	23	" com. $12.50, int. .62	13 12	
"	29	" cash 15, int. .65	15 65	
Oct.	7	" cash 15, int. .62	15 62	
"	15	" W. Stronach $516.25, int. $21.15	537 40	
"	"	" W. D. Cooke 50, int. 2.05	52 05	
		" amounts carried over	$2,782 28	$34,049 24

			Dr.	Cr.
		Page 33 of ledger:		
		Amount brought over		$34,049 24
		Amount brought over	$2,782 28	
Oct.	15	To cash $15, int. .61	15 61	
"	19	" W. Peace $747.13, int. $30.12	777 25	
"	29	" W. D. Cooke 50, " 1.93	51 93	
Nov.	17	" " " 50, " 1.78	51 78	
"	28	" " " 150, " 5.07	155 07	
Dec.	7	" " " 100, " 3.23	103 23	
"	18	" " " 50, " 1.52	51 52	
"	26	" " " 150, " 4.37	154 37	
1847.				
Feb'y	1	" bill on New York	150 00	
		" interest	3 50	
"	4	" W. D. Cooke $530	530 00	
		" interest 12.10	12 10	
"	19	" W. D. Cooke $150, int. $3.05	153 05	
Mar.	13	" " " 100, " 1.63	101 63	
"	22	" " " 150, " 2.25	152 25	
Apr.	12	" " " 275, " 3.16	278 16	
"	24	" " " 25, " .23	25 23	
"	30	" " " 100, " .85	100 85	
May	21	" " " 100, " .50	100 50	
"	22	" " " 231.15, " 1.15	232 30	
"	25	" " " 200, " .86	200 86	
June	7	" W. Peace $20.30, " 1.91	822 31	
"	8	" W. D. Cooke 200, " .43	200 43	
"	21	" cash to C. A. Edmonston, paid Feb'y 15th, 1846	30 00	
		Int. 16 months 6 days	2 40	
		" amounts carried over	$7,238 61	$34,049 24

		Dr.	Cr.
	Page 34 of ledger:		
	Amount brought over		$34,049 24
1847.			
June 21	Amount brought over	$7,238 61	
	To your ½ balance due the executors of J. Devereux, deceased	1,772 65	
" "	" int. from Jan'y 1st, 1846, compounded	159 95	
	" your ½ of stock valued by George W. Mordecai	1,684 96	
	" int. from Jan'y 1st, 1845, compounded	262 16	
	" payments to Miss Ogden omitted in course:		
	Aug. 15th, 1846 $150 00		
	Feb'y 15th, 1847 150 00		
	Int. on both 10 80		
		310 80	
		$11,429 13	$34,049 24
1847.			
June 22	Balance of above account due Mrs. D. this day		22,620 11
Nov. 12	Int. to date		527 80
	The following items to bear interest from Nov. 8th, 1848, settled and adjudged by Bishop Polk:		
	The order on F. Devereux heretofore charged her, and at interest from June 22nd, 1,341.73		
	Half cost of monument 496.00		
	Cost of graveyard, deducting her proportion, 200.25		
	Charged her in bond to C. M. Clark for Mrs. G. Devereux, 559.42, with int. from		
1847.	Page 35 of ledger:	Dr.	Cr.
	Brought over 2,037 08		$23,147 91
	From 29th Sept., 1839 874 80		
	Annuities heretofore charged & now reversed (without int.) 1,950 00		
			4,862 78
	(Note.—Those items of reversal I have never agreed to & protested against when added, & only returned my acct. in accordance to them to save my mother a ——— of ———; they are all unjust.).		
July 1st	Balance due Wm. Peace and paid him	$6 97	
	Int. to Nov. 12, 4 mos. 12 days	15	
Sep. 2	Note to Lawrence Hinton taken up	522 80	
	Interest as above, 2 months 10 days	7 84	
Nov. 9	Cash	100 00	
" 12	Cash to Mrs. McPheeters	200 00	
" 13	George Sander's note taken up	213 33	
" 13	James Nunn's " " "	1,071 27	
	Int. on above 4 ———	1 28	
Oct. 23	Cash per W. D. Cooke	75 00	
	Interest 14 days	23	
" 11	Cash to W. D. Cooke	100 00	
	Int. 1 month 1 day	50	
" 5	Cash per W. D. Cooke	75 00	
	Int. 1 month 7 days	40	
Sep. 2	Cash to W. D. Cooke	200 00	
	Int. 2 months 10 days	2 33	
Aug. 28	Cash per W. D. Cooke, int. 2 mos. 15 days	50 62	
" 17	" " " " " " " 25 "	76 06	
" 12	" " " " " " 3 mos. " "	50 75	
July 26	" " " " " " " 16 "	101 75	
		$2,856 30	$28,010 69

175 *Frances Devereux, in account, &c.*—Continued.

			Dr.	Cr.
1847.		Page 36 of ledger:		
		Brought over	$2,856 30	$28,010 69
		Credit 4 days' interest on balance		3 24
		Balance due Mrs. D., Nov. 12th	25,157 63	
			$28,013 93	$28,013 93
Nov.	12	By balance brought down		25,157 63
June	7	Mrs. F. A. Polk in New York	225 00	
		Int. to June 21st, 1848	14 02	
Sep.	10	To two cheeses in N. Y	8 33	
		" int	37	
Oct.	26	" W. D. Cooke, $175, int. $6.20	181 20	
Nov.	20	" " " " 60, " 2.10	62 10	
"	23	" " " " 50, " 1.73	51 73	
"	29	" " " " 115, " 3.86	118 86	
Dec.	24	" " " " 150, " 4.45	154 45	
"	29	" " " " 150, " 4.34	154 34	
1848.				
Jan'y	3	" " " " 200, " 5.60	205 60	
"	"	" " " " 100, " 2.66	102 66	
"	25	" " " " 100, " 2.43	102 43	
"	28	" " " " 50, " 1.20	51 20	
Feb.	1	" " " " 40, " .93	40 83	
"	"	" " " " 50, " 1.12	51 32	
"	11	" " " " 75, " 1.62	76 62	
"	14	" " " " 40, " .84	40 84	
"	22	" " " " 150, " 2.97	152 97	
"	26	" " " " 50, " .95	50 95	
Mar.	15	" " " " 100, " 1.60	101 60	
			$1,947 32	

			Dr.	Cr.
1848.		Page 37 of ledger:		
		Amount brought over	$1,947 32	
Mar.	18	To W. D. Cooke, $200.00, int. $3.10	203 10	
"	20	" " " " 200.00, " 3.03	203 03	
"	22	" " " " 200.50, " 3.03	205 53	
"	27	" " " " 100.00, " 1.40	101 40	
Apr.	1	" " " " 50.00, " .67	50 67	
"	17	" " " " 125.00, " 1.33	126 33	
"	22	" " " " 500.00, " 5.00	505 00	
"	26	" " " " 150.00, " 1.37	151 37	
May	1	" " " " 450.00, " 3.82	453 82	
"	13	" " " " 150.00, " .92	150 92	
June	10	" Mr. Cassady, 100.00, " .18	100 18	
"	20	" D. L. Swain for taxes	4 60	
Nov.	12	By balance due this day as per settlement		$25,157 63
		" int. to June 21st, 1848		917 18
		" received from J. Devereux on acrount of Mrs. Devereux		636 48
			$4,203 27	$26,711 29
		Balance due June 21st, 1878		22,508 02
June	21	To the following items entered on the 12th November to my mother's credit and now reversed, being fully satisfied she did not understand them, and, if she did, would not have pressed them, viz:		
		Order on J. Devereux	$1,331 73	

176 *Frances Devereux, in account, &c.*—Continued.

1848.			Dr.	Cr.
		Page 38 of ledger:		
		Brought over		$22,508 02
		Brought over ... $1,341 73		
		Int. for one year ... 80 50		
			1,422 23	
		NOTE.—This entry to my mother's credit, Nov. 12th, is clearly a mistake, she never having been charged with the order.		
		Half cost of monument ... $496		
		Annuities charged at sundry times and improperly reversed ... 1,950		
		$2,446		
		Int. from Nov. 12th, 7 mo's, 9 days ... 89 27		
			2,535 27	
		Annuity to Miss Ogden, Aug. 15th, 1848	150 00	
		Int. to June 21st, 1848, 10 months	7 50	
		Annuity to Miss Ogden, Feb'y 15th, 1848	150 00	
		Int. to June 21st, 4 months	3 00	
Sept.	15	Cash for books to E. P. Jones	1 75	
Oct.	9	" chairs, cleaning well	2 00	
"	"	" Waltering's bill	12 89½	
"	17	" bill on N. Y., S. M. Chester	11 00	
June	21	Balance	18,212 38	
			$22,508 02	$22,508 02

1848.			Dr.	Cr.
		Page 39 of ledger:		
		To balance due per last account		$18,212 38
		Int. to June 21st, 1849		1,092 74
		By cash to Mrs. Fuller, paid Jan'y 1st, 1847	50 00	
		Int. to June 21st, 1849	4 42	
		By cash to W. D. Cooke, paid June 21st, 1848	150 00	
		Int. one year	9 00	
July	5	By cash to Mrs. Fuller	15 00	
		Int. to June 21st, 1849	85	
"	10	" Mr. Lacy $50; int., $2.84	52 84	
"	13	" Mrs. Fuller 15; " .84	15 84	
"	"	" ——, —— —— ——		
"	"	" to meal $6; " .33	6 33	
"	15	" W. D. Cooke, 177.73; " 9.95	187 68	
"	21	" Ferrell, Johnson and Ferrell	12 28	
		" interest	66	
"	31	" Mrs. Fuller, $30.00; int., $1.60	31 60	
Aug.	2	" W. D. Cooke, 5.00; " .26	5 26	
"	7	" Mrs. Fuller, 50.00; " 2.63	52 63	
"	15	" Miss Ogden, 150.00; " 7.65	157 65	
"	21	" Mrs. Fuller, 25.00; " 1.25	26 25	
"	28	" W. D. Haywood, 9.50; " .46	9 96	
Sept.	1	" Mrs. Fuller, 25.00; " 1.20	26 20	
"	7	" J. Primrose, 158.38; " 7.37	165 75	
"	15	" Mrs. Fuller, 25.00; " 1.14	26 14	
"	15	" groceries in New York ... $67.29		
"	"	" Miss Maitland (books) ... 4.00		
		" interest ... 3.26		
			74 55	
Oct.	1	" Mrs. Fuller, $25.00; int., $1.08	26 08	
		Carried over	$1,106 97	$19,305 12

1848.			Dr.	Cr.
		Page 40 of ledger:		
		Amounts brought over	$1,106 97	$19,305 12
Oct.	3	By cash to Thomas H. Briggs	137 75	
"	"	" interest	5 89	

177 *Frances Devereux, in account, &c.*—Continued.

			Dr.	Cr.
Oct. 7	By Mr. Lacy,	$50.00; int., $2.11	52 11	
" 13	" J. M. Fowles,	25.00 " 1.03	26 03	
" 16	" Mrs. Fuller,	80.00 " 3.40	83 40	
" 17	" " "	25.00 " 1.01	26 01	
Nov. 13	" " "	50.00 " 1.81	51 81	
Dec. 1	" " "	50.00 " 1.66	51 66	
" 15	" " "	50.00 " 1.55	51 55	
1849.				
Jan'y 1	" " "	50.00 " 1.41	51 41	
" 15	" " "	50.00 " 1.30	51 30	
" 25	" " "	80.00 " 1.94	81 94	
" "	" taxes,	13.36 " .31	13 67	
" 26	" Brown & Hinton,	32.06 " .77	32 83	
" "	" J. M. Fowles,	50.68 " 1.20	51 88	
" 27	" Jesse Brown,	24.54 " .57	25 11	
" 30	" Mrs. Fuller,	50.00 " 1.17	51 17	
Feb'y 15	" " "	50.00 " 1.05	51 05	
" "	" Miss Ogden,	150.00 " 3.15	153 15	
Mar. 1	" Mrs. Fuller,	50.00 " .91	50 91	
" 15	" " "	50.00 " .80	50 80	
" 10	" box of wine,	25.00 " .40	25 40	
" 19	" G. W. Mordecai,	200.00 " 3.66	203 66	
" 30	" Mrs. Fuller,	50.00 " .66	50 66	
Apr. 7	" Charles T. Haigh and Son		24 47	
	Interest		29	
" 9	" Mr. Lacy,	$50.00; int., .60	50 60	
" 15	" Mrs. Fuller,	50.00 " .55	50 55	
	Carried over		$2,664 03	$19,305 12

1849.	Page 41 of ledger:	Dr.	Cr.
	Amounts brought over	$2,664 03	$19,305 12
Apr. 25	To E. Colburn, $84.00; int., .78	84 78	
May 1	" Mrs. Fuller, 50.00; " .42	50 42	
" 15	" " " 50.00; " .30	50 30	
	Interest paid Colburn	9 25	
		$2,858 78	$19,305 12
	Balance due the estate of Mrs. Devereux, June 21st, 1849		$16,446 34

Entry in account book marked "50," referred to in account "B," with report of com'r.

Entry in account book marked "50," offered in evidence by assignees in bankruptcy of T. P. Devereux.

Memorandum of advances made:

1839.

May 18.	Bill on B. B. & Co. for S. E. Devereux	$100 00
" "	Check	50 00
June 8.	Cash	10 00
" 29.	Cash to the church	15 00

176 *Frances Devereux, in account, &c.*—Continued.

			Dr.	Cr.
1848.		Page 38 of ledger:		
		Brought over		$22,508 02
		Brought over $1,341 73		
		Int. for one year 80 50		
			1,422 23	
		NOTE.—This entry to my mother's credit, Nov. 12th, is clearly a mistake, she never having been charged with the order.		
		Half cost of monument $496		
		Annuities charged at sundry times and improperly reversed 1,950		
		$2,446		
		Int. from Nov. 12th, 7 mo's, 9 days. 89 27		
			2,535 27	
		Annuity to Miss Ogden, Aug. 15th, 1848	150 00	
		Int. to June 21st, 1848, 10 months	7 50	
		Annuity to Miss Ogden, Feb'y 15th, 1848	150 00	
		Int. to June 21st, 4 months	3 00	
Sept.	15	Cash for books to E. P. Jones	1 75	
Oct.	9	" chairs, cleaning well	2 00	
"	"	" Waltering's bill	12 89½	
"	17	" bill on N. Y., S. M. Chester	11 00	
June	21	Balance	18,212 38	
			$22,508 02	$22,508 02

			Dr.	Cr.
1848.		Page 39 of ledger:		
		To balance due per last account		$18,212 38
		Int. to June 21st, 1849		1,092 74
		By cash to Mrs. Fuller, paid Jan'y 1st, 1847	50 00	
		Int. to June 21st, 1849	4 42	
		By cash to W. D. Cooke, paid June 21st, 1848	150 00	
		Int. one year	9 00	
July	5	By cash to Mrs. Fuller	15 00	
		Int. to June 21st, 1849	85	
"	10	" Mr. Lacy $50; int., $2.84	52 84	
"	13	" Mrs. Fuller 15; " .84	15 84	
"	"	" ——, —— —— ——		
"	"	" to meal $6; " .33	6 33	
"	15	" W. D. Cooke, 177.73; " 9.95	187 68	
"	21	" Ferrell, Johnson and Ferrell	12 28	
		" interest	66	
"	31	" Mrs. Fuller, $30.00; int., $1.60	31 60	
Aug.	2	" W. D. Cooke, 5.00; " .26	5 26	
"	7	" Mrs. Fuller, 50.00; " 2.63	52 63	
"	15	" Miss Ogden, 150.00; " 7.65	157 65	
"	21	" Mrs. Fuller, 25.00; " 1.25	26 25	
"	28	" W. D. Haywood, 9.50; " .46	9 96	
Sept.	1	" Mrs. Fuller, 25.00; " 1.20	26 20	
"	7	" J. Primrose, 158.38; " 7.37	165 75	
"	15	" Mrs. Fuller, 25.00; " 1.14	26 14	
"	15	" groceries in New York $67.29		
"	"	" Miss Maitland (books) 4.00		
		" interest 3.26		
		—— ——	74 55	
Oct.	1	" Mrs. Fuller, $25.00; int., $1.08	26 08	
		Carried over	$1,106 97	$19,305 12

			Dr.	Cr.
1848.		Page 40 of ledger:		
		Amounts brought over	$1,106 97	$19,305 12
Oct.	3	By cash to Thomas H. Briggs	137 75	
"	"	" interest	5 89	

177 *Frances Devereux, in account, &c.*—Continued.

						Dr.	Cr.
Oct.	7	By Mr. Lacy,	$50.00;	int.,	$2.11	52 11	
"	13	" J. M. Fowles,	25.00	"	1.03	26 03	
"	16	" Mrs. Fuller,	80.00	"	3.40	83 40	
"	17	" " "	25.00	"	1.01	26 01	
Nov.	13	" " "	50.00	"	1.81	51 81	
Dec.	1	" " "	50.00	"	1.66	51 66	
"	15	" " "	50.00	"	1.55	51 55	
1849.							
Jan'y	1	" " "	50.00	"	1.41	51 41	
"	15	" " "	50.00	"	1.30	51 30	
"	25	" " "	80.00	"	1.94	81 94	
"	"	" taxes,	13.36	"	.31	13 67	
"	26	" Brown & Hinton,	32.06	"	.77	32 83	
"	"	" J. M. Fowles,	50.68	"	1.20	51 88	
"	27	" Jesse Brown,	24.54	"	.57	25 11	
"	30	" Mrs. Fuller,	50.00	"	1.17	51 17	
Feb'y	15	" " "	50.00	"	1.05	51 05	
"	"	" Miss Ogden,	150.00	"	3.15	153 15	
Mar.	1	" Mrs. Fuller,	50.00	"	.91	50 91	
"	15	" " "	50.00	"	.80	50 80	
"	10	" box of wine,	25.00	"	.40	25 40	
"	19	" G. W. Mordecai,	200.00	"	3.66	203 66	
"	30	" Mrs. Fuller,	50.00	"	.66	50 66	
Apr.	7	" Charles T. Haigh and Son				24 47	
		Interest				29	
"	9	" Mr. Lacy,	$50.00;	int.,	.60	50 60	
"	15	" Mrs. Fuller,	50.00	"	.55	50 55	
		Carried over				$2,664 03	$19,305 12

1849.		Page 41 of ledger:	Dr.	Cr.
		Amounts brought over	$2,664 03	$19,305 12
Apr.	25	To E. Colburn, $84.00; int., .78	84 78	
May	1	" Mrs. Fuller, 50.00; " .42	50 42	
"	15	" " " 50.00; " .30	50 30	
		Interest paid Colburn	9 25	
			$2,858 78	$19,305 12
		Balance due the estate of Mrs. Devereux, June 21st, 1849		$16,446 34

Entry in account book marked "50," referred to in account "B," with report of com'r.

Entry in account book marked "50," offered in evidence by assignees in bankruptcy of T. P. Devereux.

Memorandum of advances made:

1839.

May	18.	Bill on B. B. & Co. for S. E. Devereux	$100 00
"	"	Check	50 00
June	8.	Cash	10 00
"	29.	Cash to the church	15 00

July	6.	Cash	500 00
"	18.	Two checks for 200 dollars each, dated Aug. 24th, 1839	400
			$1,075 00

" 19.
" "

Received the above as stated.
(S'gn') FRANCES DEVEREUX.

178 *Affidavit of Walter Clark, one of the assignees, with report of com'r.*

BLAKE ET AL.
against
W. J. HAWKINS, WALTER CLARKE, ASSIGNEES, et al.

Affidavit of Walter Clarke, defendant herein, before Commissioner Page.

This affiant, being duly sworn, deposes and says that he has not in his possession, as assignee in bankruptcy of T. P. Devereux, or otherwise, nor has he ever had possession of, nor has he ever seen, nor has he any knowledge whatsoever of any vouchers of payments made or purporting to have been made by T. P. Devereux on behalf or at the instance of Mrs. Frances Devereux, other than the vouchers already produced, and now on file before Mr. Commissioner Page, in this cause.

WALTER CLARK.

Sworn and subscribed before me this 5th day of December, A. D. 1873.
E. F. PAGE,
Commissioner.

Affidavit of R. C. Badger, with report of com'r.

BLAKE ET AL.
vs.
W. J. HAWKINS, WALTER CLARK, ASSIGNEES, et al.

Before Commissioner Page.

R. C. Badger, defendant herein, being duly sworn, says that he is the party to the record, appearing as administrator de bonis non of Mrs. Frances Devereux; that he has in his possession no vouchers or papers pertaining to the administration of the trust fund, the subject of this suit; that he has never seen any of such vouchers or papers, nor does he know of the whereabouts of any such, other than those already produced in the cause, and now on file with Mr. Commissioner Page; and that no assets of said estate have come into his possession to be administered.

Sworn to before me this the 14th day of December, 1873.
N. J. RIDDICK, *Clerk.*
By W. C. BROOKS, *Deputy.*

Filing of exceptions to report by defendants.

And afterwards, during the same term, the defendants, W. J. Hawkins and Walter Clark, assignees in bankruptcy of T. P. Devereux, by their attorneys aforesaid, file their exceptions to the report and accounts of Mr. Commissioner Page, in the words and figures following, to wit:

179 *Exceptions of def'd'ts, assignees in bankruptcy of T. P. Devereux.*

BLAKE ET AL.
against
HAWKINS, CLARK, &C., ET AL.

Exceptions to report of Mr. Commissioner Page, by Hawkins and Clark, assignees.

Exceptions to report of Mr. Commissioner Page, filed at fall term, 1873, on behalf of defendants, W. J. Hawkins and Walter Clark, as assignees in bankruptcy of T. P. Devereux, bankrupt, deceased.

The defendants except to the report of the commissioner:

1. That the commissioner has not stated the account of the item of $3,000, as requested by these defendants in par. I of the report, to wit, that he should consider the said item of $3,000 as the interest on the charge of $50,000, due March 1st, 1840, and that it should be reduced each year thereafter to the interest on so much of the $50,000 charge as remained then unpaid and not appointed.

2. That the commissioner did not receive and consider a paper writing marked Exhibit X.

3. That the commissioner did not consider the paper marked E E as sufficient evidence of an account stated between the parties, and conclusive as to all matters between them up to June 21st, 1846, except as to those matters therein particularly mentioned as excepted.

4. That the commissioner in his report found it as a fact that S. W. Whiting was merely the agent of T. P. Devereux in taking said account, whereas in truth the evidence shows that said Whiting was selected by both parties to take and state the account between them, and his action in that behalf is contained in the paper marked E E.

5. These defendants except to the ruling of the commissioner contained in par. 4 of his report, and insist that as W. D. Cooke is shown by the evidence to have been the agent of Mrs. Frances Devereux, the account stated by him, marked B B, is an account stated between the parties.

6. They except that the paper marked D D, being in evidence, the commissioner did not consider it in making up his report.

7. They except that the commissioner did not receive and consider as evidence the entries in the book marked "Ledger" as full evidence of the matters of charge and discharge between F. D. and T P. D., whereas defendants insist that the said book should have been so received, for the reasons urged before the commissioner and set out in his report.

8. They except to the account A—

1st. Because the following items of charge, viz, items of June 21st, 1846, $22,56.74, $120.95, $91.75, with the items of interest on the same, are

taken from the statement L L, containing matters of discharge as well as of charge, and the matters of discharge are not allowed.

2nd. That interest is charged on the various items of $3,000 as computed, as interest should not be so computed on either side of the account.

3rd. Because this account is not stated according to the principle contended for by defendants, as set forth in exception I, herein.

9. These defendants except to the account B—

1st. Because the commissioner in his statement of that account has not allowed all the items entered in the book marked "Ledger."

180 2nd. Because he disallowed the item of $1,772.65.

3rd. Because he disallowed the item of $1,684.00.

4th. Because he disallowed the item loss of Trent land, $4,000.

5th. Because he disallowed the payments made to Miss Ogden, and known in the account as the ⅓ Ogden annuity.

6th. Because he disallowed the payments made to Mr. Primrose, who was the agent of Mrs. Devereux.

7th. Because he disallowed the items of discharge of the grave-yard inclosure, and of the Pollock monument, as per the award of S. J. Baker and S. W. Whiting, rendered 29th July, 1847, and marked "Exhibit A A."

10. And these defendants further except to accounts A and B, because the commissioner did not begin these accounts with the balances as appear to be due by the several stated accounts offered in evidence by defendants.

11. They except to account C, because the commissioner allows to T. P. D. only the amounts actually paid by him in the purchase of the legacies, whereas he should have allowed the said Thomas the full amounts thereof.

12. They except to the report of the commissioner, because he charges T. P. Devereux, as administrator of Mrs. Frances Devereux, whereas in fact S. W. Whiting was the administrator of said estate.

13. They except to account D further, that the commissioner has charged interest on the items of charge against the administrator for and within the space of two years from the granting of letters of administration.

14. They further except to the account D, that the commissioner has charged T. P. Devereux with the item of October 13th, 1852, valuation of negroes, as per Exhibit T. P., $19,991.00, with interest on that item, 18,647.14, and with several items of June 3rd, 1853.

15. Defendants except to account E, that the commissioner—

1. Has charged interest on the item of $50,000 from the date of Mrs. Devereux's death to May 30th, 1868.

2. That the commissioner finds the item of $50,000 to have been appointed by the will of Mrs. Devereux, and charges the said T. P. D. with that item in the account E.

Filing of exceptions to report by plaintiffs.

And afterwards, during the same term, the plaintiffs, by their attorneys aforesaid, filed their exceptions to the report and accounts of Mr. Commissioner Page in the words and figures following, to wit:

Exceptions of plaintiffs.

GRINFILL BLAKE, WIFE, ET AL.,
vs.
ASSIGNEES IN BANKRUPTCY OF THOMAS P. DEVEREUX, deceased.

Exceptions of plaintiffs to report of Commissioner Page, filed at November term, 1873.

Exceptions to report of Mr. Commissioner Page, filed at November term, 1873, on behalf of plaintiffs, Grinfill Blake, wife, et al.

The plaintiffs except to the report of the commissioner—

1. The plaintiffs object to the manner in which the discharges
181 of Thomas P. Devereux are applied to liquidate the several charges upon land, and insist that all the expenditures made by Thomas P. Devereux for Mrs. Frances Devereux during her life-time ought to be applied to liquidate the gross charge of $50,000 on his land, and on interest allowed Thomas P. Devereux on such items of discharge, and hereby except to the report of commissioner, because this method was not adopted in stating account B and balance sheet E of the accounts taken by commissioner.

2. The plaintiffs also objected to the charging of the pecuniary legacies against the balance of the fund charged upon Thomas P. Devereux's land, in his hands at Mrs. Frances Devereux's death, and insist that said legacies ought to be charged against the general personal assets, and excepts to the account E, because said legacies are charged therein against the said balance found due of the two charges on lands of Thomas P. Devereux.

3. The plaintiffs further excepted to the allowance of charges for sums paid by T. P. Devereux to Mrs. C. E. Fuller, upon the ground that there was no evidence, or at least no sufficient evidence, that T. P. Devereux was authorized by Mrs. Frances Devereux to make said payments to Mrs. C. E. Fuller, and did make them on account of Mrs. Frances Devereux.

The plaintiffs admit that the charges allowed, as above, have been paid by Thomas P. Devereux to Mrs. C. E. Fuller, at their respective dates, but insist that there was no sufficient evidence that said payments were made on account of Mrs. Frances Devereux, and by her direction.

January 5th, 1874.

HAYWOOD,
FOWLE,
Attorneys for Plaintiffs.

Cause continued.

And thereupon, because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid, before the court here, on the first Monday of June, A. D. 1874.

Proceedings at June term, A. D. 1874.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and

held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, presiding, and the Hon. Hugh L. Bond, circuit court judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year, the same being the first day of said month, come the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person.

182 *Clark & John Devereux, joint trustees of the estate of P. T. Devereux, dec'd, made parties defendant.*

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend, and Georgina P. Townsend, his wife, complainants,
against
WM. J. HAWKINS AND WALTER CLARK, assignees in bankruptcy of Thomas P. Devereux, dec'd, a bankrupt, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants.

In this cause the aforesaid Walter Clark and one John Devereux, claiming to be substituted trustees, jointly, for Thomas P. Devereux, since his deceased, in the deed of the 3rd of July, 1839, mentioned in the pleadings, conveying the lands which had descended to Mrs. Frances Devereux from her brother, George Pollock, deceased, to the said Thomas P. Devereux, come into court here and apply to be made parties defendant in this cause, to litigate and protect their rights in the premises; and thereupon, by consent of all the parties, plaintiff and defendant, the said Walter Clark and John Devereux, as such joint substituted trustees, are now and here made parties defendant in this cause, and allowed herein to litigate and defend their rights in the premises.

M. R. WAITE,
Chief Justice.

By consent cause heard in absence of executor of T. P. Devereux.

And afterwards, during the same term, the defendants, viva voce, in open court, insisted that the executor of Thomas P. Devereux, deceased, was a necessary party in this cause; but it being conceded by all the parties, plaintiff and defendant, that the said Thomas P. Devereux was entirely insolvent at the date of his death, and owned no property or estate, real or personal, and the plaintiffs here in open court, waiving all claim against the said executor on account of any estate or property acquired by the said Thomas P. Devereux since his bankruptcy, by consent of all parties, here in open court given, the cause is proceeded with and heard in the absence of the executor of the said Thomas P. Devereux.

183 *Final decree.*

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. DEVEREUX Blake, his wife, and John Townsend and Georgiana P. Townsend, his wife, complainants,
against
WILLIAM J. HAWKINS AND WALTER CLARK, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants.

This cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, the court did declare—

1. That the testatrix Frances Devereux did not by her last will and testament appoint the fund of fifty thousand dollars ($50,000), which by the deed of July 3rd, 1839, conveying her lands to Thomas P. Devereux, she had power to charge upon said land, to be part of her general personal estate in the hands of her executors, nor appoint the said fund at all, except so far as it is necessary to resort to the same to pay off the pecuniary legacies bequeathed by her in her said will, after exhausting for that purpose what remains of her general personal assets, after payment of her debts and funeral expenses, and the costs of administering her estate.

2. That the deed of 1845, executed by the said Frances, styled in the answer of T. P. Devereux "The deed of explanation," was effectual, and that the operation thereof was to reduce the annuity of three thousand dollars ($3,000) charged upon said lands, in said deed of 1839, proportionably as the said Frances reduced the aforesaid fifty thousand dollars ($50,000) by her appointments or outlays, so as to make said annuity, in each and every year, equal to six per cent. interest on so much of said fund of $50,000 as remained unappointed or unexpended by the said Frances, in each and every year respectively.

3. That the plaintiffs are not entitled to any account of the said fund of $50,000, except so far as it is necessary to take an account of the same to ascertain the amount of the aforesaid annuity, in each and every year during the life of the said Frances, but that they are entitled to an account of so much of said annuity as remained unexpended in the hands of Thomas P. Devereux at the date of the decease of the said Frances, and also to an account of so much and such parts of the general personal estate of the said Frances, including the negro slaves divided between the said Thomas P. and the defendants, Leonidas Polk, in October, 1852, as came to the hands of the said Thomas P. after the decease of the said Frances; but the said Thomas P. is not liable to account with the plaintiffs generally, as executor of the last will and testament of the said Frances, for all her personal estate—and especially is he not liable to account with them for so

much, or such parts, of said personal estate as came into the hands
184 of Seymour Whiting, deceased, to be administered by him, either as administrator pendente lite, or as administrator cum testamento annexo of the said Frances.

4. That in taking the account with the estate of the said Thomas P., now in the hands of the defendants, who are his assignees in bankruptcy, the said assignees are to be credited with the amounts which the said Thomas P. expended in purchasing up the pecuniary legacies bequeathed by the said Frances to the several charitable societies, and the said assignees are not to be credited with the full amount of said legacies, unless, or except, where the said Thomas P. paid the full amount therefor.

5. That, in taking the account last aforesaid, the master shall regard the paper writing, bearing date October 20th, 1846, signed by Frances Devereux, and accompanying Mr. Commissioner Page's report, filed at this term as an exhibit, marked "E E," as a stated account between the said Frances and Thomas P. Devereux, deceased, conclusive of all matters of account between them, both in respect to the $50,000 fund, and the $3,000 annuity aforesaid, previous to and including the 22nd day of June, 1846, excepting such matters of account as are, by the express terms of said paper writing, saved out of its operation, for future adjustment, by reference, or otherwise; ascertaining the balance due by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 22nd day of June, 1846, to be twenty-nine thousand six hundred and sixty-four dollars and sixty cents ($29,664.60).

6. That, in taking said account, the master shall also regard the paper writing, made out some time in the latter part of the year 1847, signed by William D. Cooke, and accompanying Mr. Commissioner Page's said report, as an exhibit, marked "B B," as a stated account between the said Frances and Thomas P. Devereux, deceased, conclusive of all matters of account between them, in respect to the $50,000 fund, and the $3,000 annuity aforesaid, and all other matters previous to and including the 21st day of June, 1847, saving such matters of account as are, by the note at the foot of said paper writing, expressly excepted out of its operation, for future adjustment, by reference, or otherwise, ascertaining the balance due, by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 21st day of June, 1847, to be twenty-five thousand and thirty-six dollars and ninety-seven cents ($25,036.97).

And thereupon it was ordered, adjudged, and decreed, that the matters of account involved in the pleadings be referred back to E. F. Page, esquire, who is hereby appointed especial master for that purpose, to take an account upon the basis of this decree, and the declarations and instructions hereinbefore contained, and report to this court, at its next term.

And afterwards, during the present term of this court, the plaintiffs, by their counsel, in open court, waived their right to have an account taken, upon the basis of the former part of this decree, and the declarations and instructions therein contained, and admitted that, upon an account taken, in accordance with said declarations and instructions, it would appear that Thomas P. Devereux, deceased, was not, at the date of the death of Frances Devereux, indebted to her in any amount, and all the defendants herein, by their counsel, in open court, conceded as much.

And it was, in like manner, admitted and conceded, by all the parties to this cause, plaintiff and defendant, that it sufficiently appears
185 by such portions of Mr. Commissioner Page's accounts, filed at this term, as are not excepted to either by the plaintiffs or defendants, that on the 31st day of May, 1868, the date of Thomas P. Devereux's bankruptcy, the said Thomas P. had in his hands, of the general personal assets of Mrs. Frances Devereux, after payment of $8,424.36 of debts, funeral expenses, and costs of administration, the sum of $41,633, which includes interest to that date.

That, on the same date, he had expended in payment or purchase of the pecuniary legacies, bequeathed by the will of the said Frances, the sum of $39,466.58, which includes interest to that date, which latter sum, being deducted from the former, in accordance with the principles of account, and the directions and instructions set out in the previous part of this decree, leaves a balance in the hands of the said Thomas P. Devereux, at the date last aforesaid, of the general assets of the said Frances Devereux, deceased, of $2,166.42, for which balance the estate of the said Thomas P., in the hands of his assignees in bankruptcy, is liable to the next of kin of the said Frances; and for one-third of which balance, to wit, the sum of $722.14, the feme plaintiffs, as two of said next of kin, are entitled to make proof in said bankruptcy against the estate of the said Thomas P., in the hands of his assignees aforesaid.

And thereupon, it being obvious to the court that a new reference and further account in the premises was entirely useless and unnecessary, it was finally ordered, adjudged, and decreed that the plaintiffs, Grinfill Blake and Elizabeth J., his wife, and John Townsend and Georgina P., his wife, do recover of the defendants, William G. Hawkins and Walter Clark, assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, and of the said Walter Clark and the defendant, John Devereux, substituted trustees for Thomas P. Devereux, deceased, under the deed for the Pollock land, of July 3rd, 1839, the sum of $722.14, to be paid out of the assets and estate of the said Thomas P. Devereux, in their hands respectively, ratably and pari passu with the other debts of the said Thomas P., which have been, and shall be proved by his creditors against said estate and effects, in the hand of said defendants, respectively.

That E. F. Page, esquire, be allowed $150.00 for his report and accounts filed at this term, and John Devereux be allowed $50.00 for his services rendered in taking said account; both of said sums to be taxed in the costs.

That the costs in this cause, to be taxed by the clerk, including the two items last aforesaid, be paid by the assignees in bankruptcy, and substituted trustees aforesaid, out of the estate and effects which were of Thomas P. Devereux now in their hands, except such costs as were incurred before the filing of the petition in bankruptcy of T. P. Devereux, deceased, for which costs last aforesaid, judgment is given against the defendants, assignees, and trustees aforesaid, the same to be proved against the estate and effects of the said bankrupt, in their hands, and to be paid ratably, and pari passu, with the other debts of the said T. P. Devereux, which have been and shall be proved by his general creditors against the said estate and effects.

Appeal.

From which said decision of the court and the decree made in pursuance, thereof, the plaintiffs, Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and John Townsend, and Georgina Townsend, his wife,
186 now and here in open court, all the defendants being present and represented by counsel, crave an appeal to the Supreme Court of the United States, which appeal is allowed them by the court, and any further notice of appeal is waived by the defendants, and each and all of them. And the amount of the supersedeas bonds to be filed by the appellants is fixed by the court here at $500.00; and the said appellants forthwith file their said supersedeas bond for $500, with J. N. Bunting and J. Rowan Rogers as sureties thereto, the sufficiency of which bond is admitted by the defendants, and the same is thereupon approved by the court here.

M. R. WAITE,
Chief Justice Supreme Court United States.

The foregoing cause was decided by me, at the June term, A. D. 1874, and the counsel were permitted to settle the details of the decree in vacation.

The details were not agreed upon until the 22nd January, 1875, when the decree, as drafted, was forwarded to me for my approval and signature, and at that date I ordered it enrolled, and allowed the plaintiffs' appeal and approved the appeal bond, the defendants waiving any further or other notice of the appeal and any formal citation.

January 22nd, 1875.

M. R. WAITE,
Chief Justice, &c.

Appeal bond.

UNITED STATES OF AMERICA,
Eastern District of North Carolina, ss:

Know all men by these presents that we, Grinfill Blake, John Townsend, John N. Bunting, and J. Rowan Rogers are held and firmly bound unto William J. Hawkins and Walter Clark, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, dec'd, a bankrupt, to Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and R. C. Badger, adm'r de bonis non cum testamento annexo, of Frances Devereux, dec'd, in the full and just sum of five hundred dollars, to be paid to the said obligees and their several certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 6th day of January, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately at a circuit court of the United States for the eastern district of North Carolina, sitting in equity in a suit pending in said court between the said Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and the said John Townsend and Georgiana P. Townsend, his wife, plaintiffs, and the within-named obligees, defendants, a decree was rendered which

was unsatisfactory to the said plaintiffs, and from which they craved an appeal to the Supreme Court of the United States then and there in open court, all the defendants being present and represented by counsel, which said appeal was then and there allowed by the court:

Now, the condition of the above obligation is such that if the said Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and John Townsend and Georgiana P. Townsend, his wife, shall prosecute their said appeal to effect and answer all damages and costs if they fail to
187 make their plea good, then the above obligation to be void; else to remain in full force and virtue.

GRINFILL BLAKE, [SEAL.]
By his att'y, E. G. HAYWOOD.
JOHN TOWNSEND, [SEAL.]
By his att'y, E. G. HAYWOOD.
J. ROWAN ROGERS. [SEAL.]
J. N. BUNTING. [SEAL.]

Sealed and delivered in presence of—

Approved January 22, A. D. 1875.

M. R. WAITE,
Chief Justice Sup. Ct. U. S.

(Indorsed:) No. 1 E. Grinfill Blake and wife and others vs. W. J. Hawkins and Walter Clark, assignees, &c., & others. Appeal bond. Filed Feb'y 2nd, 1875. N. J. Riddick, clerk.

188 *Proceedings of June term*, 1879.

At a term of the circuit court of the United States, begun and held for the eastern district of North Carolina, at the court-room of said court, in the city of Raleigh, on the first Monday of June, in the year of our Lord one thousand eight hundred and seventy-nine, before the honorable Hugh L. Bond, circuit court judge, presiding, and the honorable Geo. W. Brooks, district court judge, of said district, associate judges, sitting in equity, the same being the second day of said month, come the parties aforesaid, by their said attorneys, except Richard C. Badger, who comes in his own proper person, and the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. DEVEREUX Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, appellants,
vs.
WILLIAM J. HAWKINS AND WALTER CLARK, AS assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, to wit:

189 *Mandate of the Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of North Carolina, greeting:

Whereas lately in the circuit court of the United States for the eastern district of North Carolina, before you or some of you, in a cause between Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants, and William J. Hawkins and Walter Clark, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants, wherein the decree of the said circuit court, entered in said cause on the 22nd day of January, A. D. 1875, is in the following words, viz.:

"This cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, the court did declare—

"1. That the testatrix, Frances Devereux, did not by her last will and testament appoint the fund of fifty thousand dollars ($50,000),
190 which by the deed of July 3rd, 1839, conveying her lands to Thomas P. Devereux, she had power to charge upon said land, to be part of her general personal estate in the hands of her executors, nor appoint the said fund at all, except so far as it is necessary to resort to the same to pay off the pecuniary legacies bequeathed by her in her said will, after exhausting for that purpose what remains of her general personal assets after payment of her debts and funeral expenses and the costs of administering her estate.

"2. That the deed of 1845, executed by the said Frances, styled in the answer of T. P. Devereux 'The deed of explanation,' was effectual, and that the operation thereof was to reduce the annuity of three thousand dollars ($3,000), charged upon said lands in said deed of 1839, proportionably as the said Frances reduced the aforesaid fifty thousand dollars ($50,000) by her appointments or outlays, so as to make said annuity, in each and every year, equal to six per cent. interest on so much of said fund of $50,000 as remained unappointed or unexpended by the said Frances in each and every year, respectively.

"3. That the plaintiffs are not entitled to any account of the said fund of $50,000, except so far as it is necessary to take an account of the same to ascertain the amount of the aforesaid annuity in each and every year during the life of the said Frances, but that they are entitled to an
191 account of so much of said annuity as remained unexpended in the hands of Thomas P. Devereux at the date of the decease of the said Frances, and also to an account of so much and such parts of the general personal estate of the said Frances, including the negro slaves divided between the said Thomas P. and the defendant, Leonidas Polk, in October, 1852, as came to the hands of the said Thomas P. after the decease of the said Frances; but the said Thomas P. is not liable to account with the plaint-

iffs generally, as executor of the last will and testament of the said Frances, for all her personal estate, and especially is he not liable to account with them for so much, or such parts, of said personal estate as came into the hands of Seymour Whiting, deceased, to be administered by him, either as administrator pendente lite, or as administrator cum testamento annexo of the said Frances.

"4. That in taking the account with the estate of the said Thomas P., now in the hands of the defendants, who are his assignees in bankruptcy, the said assignees are to be credited with the amounts which the said Thomas P. expended in purchasing up the pecuniary legacies bequeathed by the said Frances to the several charitable societies, and the said assignees are not to be credited with the full amount of said legacies, unless or except where the said Thomas P. paid the full amount therefor.

192 "5. That in taking the account last aforesaid the master shall regard the paper writing, bearing date October 20th, 1846, signed by Frances Devereux, and accompanying Mr. Commissioner Page's report, filed at this term as an exhibit, marked E E, as a stated account between the said Frances and Thomas P. Devereux, deceased, conclusive of all matters of account between them, both in respect to the $50,000 fund and the $3,000 annuity aforesaid, previous to and including the 22nd day of June, 1846, excepting such matters of account as are, by the express terms of said paper writing saved out of its operation for future adjustment, by reference or otherwise; ascertaining the balance due by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 22nd day of June, 1846, to be twenty-nine thousand six hundred and sixty-four dollars and sixty cents ($29,664.60).

"6. That in taking said account the master shall also regard the paper writing, made out some time in the latter part of the year 1847, signed by William D. Cooke, and accompanying Mr. Commissioner Page's said report as an exhibit, marked B B, as a stated account between the said Frances and Thomas P. Devereux, deceased, conclusive of all matters of account between them, in respect to the $50,000 fund and the $3,000 annuity aforesaid, and all other matters previous to and including the 21st day of June, 1847, saving such matters of account as are by the note

193 at the foot of said paper writing expressly excepted out of its operation for future adjustment, by reference or otherwise, ascertaining the balance due by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 21st day of June, 1847, to be twenty-five thousand and thirty-six dollars and ninety-seven cents ($25,036.97)."

And thereupon it was ordered, adjudged, and decreed that the matters of account involved in the pleadings be referred back to E. F. Page, esquire, who is hereby appointed especial master for that purpose, to take an account upon the basis of this decree, and the declarations and instructions hereinbefore contained, and report to this court at its next term.

And afterwards, during the present term of this court, the plaintiffs, by their counsel, in open court, waived their right to have an account taken upon the basis of the former part of this decree, and the declarations and instructions therein contained, and admitted that upon an account taken in accordance with said declarations and instructions it would appear that

Thomas P. Devereux, deceased, was not, at the date of the death of Frances Devereux, indebted to her in any amount, and all the defendants herein, by their counsel, in open court, conceded as much.

And it was, in like manner, admitted and conceded by all the
194 parties to this cause, plaintiff and defendant, that it sufficiently appears by such portions of Mr. Commissioner Page's account, filed at this term, as are not excepted to either by the plaintiffs or defendants, that on the 31st day of May, 1868, the date of Thomas P. Devereux's bankruptcy, the said Thomas P. had in his hands, of the general personal assets of Mrs. Frances Devereux, after the payment of $8,424.36, of debts, funeral expenses, and costs of administration, the sum of $41,633 which includes interest to that date.

That on the same date he had expended in payment or purchase of the pecuniary legacies bequeathed by the will of the said Frances the sum of $39,466.58, which includes interest to that date, which latter sum being deducted from the former, in accordance with the principles of account, and the directions and instructions set out in the previous part of this decree, leaves a balance in the hands of the said Thomas P. Devereux, at the date last aforesaid, of the general assets of the said Frances Devereux, deceased, of $2,166.42, for which balance the estate of the said Thomas P., in the hands of his assignees in bankruptcy, is liable to the next of kin of the said Frances; and for one-third of which balance, to wit, the sum of $722.14, the feme plaintiffs, as two of said next of kin, are entitled to make proof in said bankruptcy against the estate of the said Thomas P., in the hands of his assignees aforesaid.

And thereupon, it being obvious to the court that a new reference and further account in the premises was entirely useless and unneces-
195 sary, it was finally ordered, adjudged, and decreed that the plaintiffs, Grinfill Blake and Elizabeth J., his wife, and John Townsend and Georgina P., his wife, do recover of the defendants, William [G.] Hawkins and Walter Clark, assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, and of the said Walter Clark, and the defendant, John Devereux, substituted trustees for Thomas P. Devereux, deceased, under the deed for the Pollock land, of July 3rd, 1839, the sum of $722.14, to be paid out of the assets and estate of the said Thomas P. Devereux, in their hands respectively, ratably and pari passu with the other debts of the said Thomas P., which have been, and shall be proved by his creditors against said estate and effects, in the hand of said defendants, respectively.

That E. F. Page, esquire, be allowed $150.00 for his report and accounts filed at this term, and John Devereux be allowed $50.00 for his services rendered in taking said account, both of said sums to be taxed in the costs.

That the costs in this cause, to be taxed by the clerk, including the two items last aforesaid, be paid by the assignees in bankruptcy and substituted trustees aforesaid, out of the estate and effects which were of Thomas P. Devereux now in their hands, except such costs as were incurred before the filing of the petition in bankruptcy of T. P. Devereux, deceased, for which costs last aforesaid, judgment is given against the defendants,
196 assignees and trustees aforesaid, the same to be proved against the estate and effects of the said bankrupt in their hands, and to be

paid ratably and pari passu with the other debts of the said T. P. Devereux, which have been and shall be proved by his general creditors against the said estate and effects, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-eight, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that the said complainants recover against the said defendants, William J. Hawkins et al., for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with instructions to direct a new accounting, and to enter a decree in conformity with the opinion of
197 this court (6th January, 1879); you, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the second day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Cost of complainants: Clerk, $; paid by attorney, $, defendants.

Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

(Endorsed:) Filed June 9th, 1879. N. J. Riddick, clerk.

198 *Petition of L. N. Taylor to intervene.*

In the circuit court of the United States for the fourth circuit and eastern district of North Carolina. June term, 1879. In equity.

GRINFILL BLAKE AND OTHERS
against
W. J. HAWKINS, JOHN DEVEREUX, AND WALTER CLARK, trustees, and others. } Petition.

To the honorable the judges of said court:

The petition of Louisa N. Taylor, of Wake County, North Carolina, respectfully showeth to your honors:

I. That, as appears on p. 13, et seq., of the printed record herein, Mrs. Frances Devereux conveyed to Thomas P. Devereux the lands therein specified, subject to certain charges, which will fully appear by reference to said deed.

II. That the said Mrs. Frances Devereux, by her will, to be found on page 18, et seq., in the execution of her power to charge said lands, made certain bequests, and left certain annuities, among them as follows:

199 "ITEM 8. I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of $7,500.00 in trust for the following purposes: First, to Miss Louisa Taylor, daughter of Mrs. Eliza Taylor, fifty dollars, annually, during her natural life," and certain other annuities, amounting in all to $450, the same being the legal interest upon the sum of $7,500, above mentioned.

And also on page 20:

"ITEM FOURTH. From the funds arising from the sale of the above slaves and the house and lot in Chapel Hill, it is my will that at the death of Mrs. Eliza Taylor, her daughter, Louisa, shall receive the further sum of $150 annually during her natural life, or should the said Mrs. Eliza Taylor by, &c., or arrive at the age of sixty years, then, &c., the said Louisa Taylor shall receive the above-mentioned sum of $150 per annum during her natural life over and above the sum of fifty dollars per annum heretofore provided for her, the same to be paid the said Louisa Taylor by my executors annually."

The death of Mrs. Frances Devereux and the qualification of T. P. Devereux, executor, &c., will all fully appear by reference to the record in this case.

III. That Mrs. Eliza Taylor arrived at the age of sixty years on April 1, 1860; that Thomas P. Devereux sold the house and lot in Chapel Hill, received the proceeds, and converted the slaves to his own use to
200 the amount of $9,995.50, if not more, and paid the annuity of $150 (as well as the annuity of $50 granted in item 8) up to the year 1867.

IV. That on the 21st day of May, 1868, Thomas P. Devereux was declared a bankrupt upon his own petition; that assignees were elected, and thereafter, under the provisions of the bankrupt act, trustees were *were* appointed, &c., as fully appears in the record herein; that the trustees have sold the lands mentioned in the deed and will, and hold the proceeds under order of this court, subject to any just charges upon the same.

V. That the bankrupt, in his schedule, enumerates the annuities due petitioner as a debt, with security, and a lien upon the lands mentioned in his schedule; and in his schedule B declares that the lands mentioned are subject to the charge of these annuities, as will fully appear by reference to said schedule.

VI. That on March 26th, 1869, the said petitioner duly proved and filed her debt against said bankrupt, as a debt with security, the amount being the then value of the annuities, at the age of the annuitant, with the addition of two unpaid instalments, and interest, to wit:

Value of $50 annuity (age 45).....	$626 53
Two payments overdue	100
Interest on the payments.....	5
	$731 53
201 Value of $150 annuity (age 45).....	$1,879 59
Two payments over due.....	300
Interest on the payments.....	15
	2,194 59

and the security, being all the lands owned by the bankrupt at the date of filing his petition in bankruptcy, being the same described in the deed hereinbefore referred to, and the proceeds thereof now being in the hands of the trustees.

Wherefore your petitioner prays that she may be allowed to come in and make herself a party to this suit and assert her rights herein; that the value of her annuities, as proved by her, in bankruptcy, together with interest thereon from March 26th, 1869, may be declared to be a first charge upon the fund in the hands of the trustees, which represents the lands heretofore described, and that said trustees be directed out of the same to pay to your petitioner the said amount of her claim, with interest, and that your petitioner may have such other and further relief in the premises as to your honor may seem just.

And your petitioner will ever pray, &c.

JNO. W. HINSDALE,
Sol. for Petitioner Gilliam.

(Endorsed:)

Service accepted, and we agree it may be heard, if practicable, at June term, 1879.

MERRIMON, FULLER & ASHE,
For Self, and G. & G., Att'ys.
HAYWOOD, *Att'y for Pl'ffs.*

Filed June 7, 1879. N. J. Riddick, clerk.

202 *Defendants' answer to the petition of L. N. Taylor to interve .*

BLAKE
vs.
HAWKINS ET AL.

Defendants, assignees in bankruptcy, answer the petition of Louisa Taylor, and say:

1. That T. P. Devereux did not promise and undertake to pay said annuity of $50, or said annuity of $150, within three years next before the filing of the petition herein.

And defendants plead and rely on the statute of limitations.

2. That the fund of $7,500 directed to be raised by item of the will of Frances Devereux, was raised agreeably thereto, and the said annuity of $50 was paid therefrom from time to time. And the lands of T. P. Devereux were thereby discharged of and from the payment of said annuity.

That said annuity is no charge upon the land.

3. That the annuity of $150 was not a charge upon said lands, but upon the negroes and house and lot in Chapel Hill.

That said house appears to have been sold for $45.

203 That the negroes coming into the hands of T. P. Devereux were never sold by him, but were lost by the results of the war, and there remained in the hands of T. P. Devereux at the date of his bankruptcy no part of said fund.

4. That the $7,500 was not given to T. P. Devereux in trust to pay these legacies aforesaid, but absolutely.

5. That the petitioner is in nowise entitled to any relief herein.

MERRIMON, FULLER & ASHE.

(Endorsed:) Filed June 7th, 1879. N. J. Riddick, clerk.

204 *Argument of Counsel.*

UNITED STATES OF AMERICA.
Eastern District of North Carolina.

In circuit court of U. S for said district. June term, A. D. 1879.

GRINFILL, BLAKE AND WIFE ET AL., PL'FF'S, *against* WILLIAM J. HAWKINS AND OTHERS, DE'F'TS. } In equity.

In this cause the mandate from the Supreme of the U. S. is filed, and to avoid the expense and delay incident to taking the account ordered and directed herein by the decision and decree of said court, and because from the accounts already heretofore taken in this cause the parties are able to ascertain by agreement all the results necessary for the final determination of this cause, without the new accounting directed by said decree of Supreme Court, by consent of all the parties, plaintiff and defendant herein, all further account herein is waived, and it is agreed that the balance charged on the land of Thomas P. Devereux, and which Mrs. F. Devereux had not disposed of during her life, and which by her will she appointed to her executors, was on the third (3rd) of June, 1849, the date of her death, the sum of ($21,527,67), twenty-one thousand five hundred and twenty-seven dollars and sixty-seven cents.

265 $7,500 LEGACY.

As to the legacy of $7,500 to T. P. Devereux in trust, it is agreed:

1. That Miss Louisa Taylor still survives and was regularly paid her annuity up to 1866.

2. That Ellen Anderson is dead, dying prior to 1860, and was paid her annuity up to her death.

3. That Mrs. E. Kinns died prior to 1860, and was paid her annuity up to her death.

4. That the two girls at the mission school at Ceylon have never been heard from; no application has ever been made on their behalf for payment.

5. That the annuity to the Rev. T. Baldwin, corresponding secretary, &c., was paid up to 1861.

6. That the annuity of $140 to T. P. D. was used for the purpose designated until 1861 or 1862.

206 ACCOUNT D.

The account heretofore taken of the general personal assets of Frances Devereux, being account D, filed at June term, 1874, by Mr. Commissioner Page, is correct, except that the defendants insist on the allowance of their

exception to said account (No. 14) to this extent, that said T. P. Devereux is chargeable only with one-half of the value of said negroes, being $9,995.50, with interest thereon, $9,823.57, instead of with the full amount of said items; and the defendants agree that said account, when so reformed, will be correct. And they submit it to the court to say whether said account shall not be so reformed.

While the plaintiffs insist that defendants are barred by the decree of June term, 1874, and their consent set out therein, from questioning any part of account D; and even if it were open to attack by them, that it is correct in the particular whereof the defendants complain; and they submit to the court to decide whether said account shall be reformed in any respect.

READE & BUSBEE & BUSBEE,
Counsel for L. N. Taylor.

HAYWOOD,
Of Counsel for Pl'ffs.

MERRIMON, FULLER & ASHE,
Of Counsel for Def'd'ts.

(Endorsed:) Filed June 9th, 1879. N. J. Riddick, clerk.

207 *Cause continued.*

And thereupon, because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the last Monday of November, A. D. 1879.

208 *Proceedings of November term*, 1879.

Afterwards, at a term of the said circuit court begun and held for the eastern district of North Carolina, at the court-room of said court in the city of Raleigh, on the last Monday of November, in the year of our Lord one thousand eight hundred and seventy-nine, before the honorable Hugh L. Bond, circuit judge, presiding, and the honorable Geo. W. Brooks, district court judge of said district, associate judges, sitting in equity, the same being the twenty-fourth day of said month, come the aforesaid parties by their said attorneys, except Richard C. Badger, who comes in his own proper person, and the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. DEVEREUX, his wife, and John Townsend and Georgina P. Townsend, his wife,

vs.

WILLIAM J. HAWKINS AND WALTER CLARK, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the Thomas P. Devereux, and Richard C. Badger, administrator de bonis cum testamento annexo of Frances Devereux, deceased, to wit:

209 *Decree final.*

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

In circuit court of United States for the district aforesaid, sitting in equity. November term, A. D. 1879.

GRINFILL BLAKE AND WIFE, ELIZ. J. DEVEREUX BLAKE, JOHN TOWNSEND AND WIFE, GEORGINA P. TOWNSEND, complaina'ts,
against.
WILLIAM J. HAWKIN AND WALTER CLARK, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants.

In this cause the mandate from the Supreme Court of the United States herein reversing the decree made by this court at June term, A. D. 1874, in so far as it declared that the will of Frances Devereux, dec'd,
210 was not an appointment of so much of the $50,000.00 fund charged upon the land of Thomas P. Devereux by the deed of July 3rd, 1839, as remained unappointed by the said Frances Devereux at the date of her decease, was filed at June term, A. D. 1879, and this cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof and in pursuance of the directions of the mandate and decision of said Supreme Court, the court here do declare:

1. That the testatrix, Frances Devereux, did, by her last will and testament, appoint so much of said fund of $50,000.00 as remained unappointed at the date of her decease, to be part of her general personal assets in the hands of executors for the payment of the pecuniary legacies bequeathed by her in her said last will and testament.

2. That the deed of 1845, executed by the said Frances, styled in the answer of T. P. Devereux "The deed of explanation," was effectual, and that the operation thereof was to reduce the annuity of three thousand dollars ($3,000) charged upon said lands in said deed of 1839 proportionably as the said Frances reduced the aforesaid fifty thousand dollars ($50,000) by her appointments or outlays, so as to make said annuity, in each and every year, equal to six per cent. interest on so much of said fund of
211 $50,000 as remained unappointed or unexpended by the said Frances in each and every year respectively.

3. That the plaintiffs are entitled to an account of said fund of $50,000.00 and to have ascertained how much of said fund remained unappointed by the said Frances Devereux at the date of her decease; and also to an account of so much and such parts of the general personal estate of the said Frances, including the negro slaves divided between the said Thomas P. and the defendant Leonidas Polk, in October, 1852, as came to the hands of the said Thomas P. after the decease of the said Frances; but the said

Thomas P. is not liable to account with the plaintiffs generally as executor of the last will and testament of the said Frances for all her personal estate, and especially is he not liable to account with them for so much or such parts of said personal estate as came into the hands of Seymour Whiting, deceased, to be administered by him, either as administrator pendente lite or as administrator cum testamento annexo of the said Frances.

4. That in taking the account with the estate of the said Thomas P., now in the hands of the defendants, who are his assignees in bankruptcy, the said assignees are to be credited with the amounts which the
212 said Thomas P. expended in purchasing up the pecuniary legacies bequeathed by the said Frances to the several charitable societies; and the said assignees are not to be credited with the full amount of said legacies, unless or except where the said Thomas P. paid the full amount therefor.

5. That, in taking the account last aforesaid, the master shall regard the paper writing, bearing date October 20th, 1846, signed by Frances Devereux and accompanying Mr. Commissioner Page's report, filed at June term, 1874, as an exhibit marked E E, as a stated account between the said Frances and Thomas P. Devereux, deceased, conclusive of all matters of account between them, both in respect to the $50,000 fund and the $3,000 annuity aforesaid previous to and including the 22nd day of June, 1846, excepting such matters of account as are by the express terms of the said paper writing saved out of its operation for future adjustment by reference or otherwise, ascertaining the balance due by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 22nd day of June, 1846, to be $29,664.60.

6. That in taking said account the master shall also regard the paper writing made out some time in the latter part of the year 1847, signed by Wm. D. Cooke, and accompanying Mr. Commissioner Page's
213 said report as an exhibit, marked B B, as a stated account between the said Frances and Thomas P. Devereux, deceased, conclusive of all matters of account between them in respect to the $50,000 fund and the $3,000 annuity aforesaid ,and all other matters previous to and including the 21st day of June, 1847, saving such matters of account as are by the note at the foot of said paper writing expressly excepted out of its operation for future adjustment by reference or otherwise, ascertaining the balance due by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 21st day of June, 1847, to be $25,036.97.

7. That at said June term, 1847, it was admitted and conceded by all the parties to this cause, plaintiff and defendant, that it sufficiently appears by such portions of Mr. Commissioner Page's accounts, filed at that term, as are not excepted to either by the plaintiffs or defendants, that on the 31st day of May, 1868, the date of Thomas P. Devereux's bankruptcy, the said Thomas P. had in his hands of the general personal assets of Mrs. Frances Devereux, after the payment of $8,424.36 of debts, funeral expenses, and costs of administration, the sum of $41,633, which includes interest to that date.

214 That on the same date he had expended in payment or purchase of the pecuniary legacies bequeathed by the will of the said Fra..ces the sum of $39,466.58, which includes interest to that date.

8. It is further declared that the said Thomas P. Devereux never raised and appropriated the $7,500.00 appointed to him in trust by the will of the said Frances out of his lands, conveyed to him by the aforesaid deed of July 3rd, 1839, and that all the annuitants provided for by said appointment of $7,500.00 are dead or have abandoned their claims, except Louisa N. Taylor, who is still living; and that none of said annuities have been paid since the first day of January, 1863, except the annuity to the said Louisa N. Taylor, which was paid by said Thomas P. Devereux up to the 1st day of January, 1867; and the court doth declare that there is a resulting trust for one-third of said sum of $7,500.00, and interest thereon from the 1st day of January, 1863, to the plaintiffs, subject, however, to the said Louisa N. Taylor's claim for the value of her annuity of $50.00 per annum, one-third of which value falls upon the plaintiffs' share of said resulting trust; which said claims of the said Louisa N. and the said plaintiffs are first liens upon the lands of the said Thomas P. Devereux or the proceeds thereof in the hands of the defendants, in the relative order in which said claims are last herein stated, and are
215 to be first paid in full by the defendants with and out of the proceeds of said lands.

9. It is further declared that the said Thomas P. Devereux, before November, 1852, purchased up all the other pecuniary legacies bequeathed by the will of the said Frances, and after said purchase, and before the day and date last aforesaid, converted to his own use all the general personal assets of the said Frances specified in section 7 of this decree as amounting on the 31st day of May, 1868, to forty-one thousand six hundred and thirty-three dollars ($41,633.00), claiming the same to belong to him to satisfy the said pecuniary legacies and the aforementioned sum of $7,500.00; and the court doth declare that the annuity of $150.00 per annum bequeathed by the will of the said Frances to the said Louisa N. Taylor was and is a first lien on said sum of $41,633.00 of general assets, and ought to have been first paid thereout, and that the plaintiffs ought to have been paid one-third of said sum of general assets, subject to the burden of one-third of the annuity of $150.00 per annum to the said Louisa N. Taylor; and that the said pecuniary legacies purchased by the said Thomas P. Devereux as aforesaid, and the aforesaid sum of $7,500.00, ought to have been paid out of the fund charged and appointed by
216 the last will and testament of the said Frances Devereux on and out of the lands of the said Thomas P. Devereux, and the money to satisfy the same ought to have been raised on and out of said lands, and that said lands were exonerated from said burden by the use by the said Thomas P. Devereux, of the general personal assets aforesaid, whereby the plaintiffs have become entitled to have their aforesaid one-third of said general personal assets, burdened as aforesaid, paid out of the proceeds of said lands in the hands of the defendants, and the said Louisa N. Taylor has become entitled to have the value of her aforesaid annuity of $150.00 per annum paid to her out of the said proceeds of the said lands, and in preference to the said claim of the plaintiffs; and it is declared by the court here that the last aforesaid claim of the said Louisa N. Taylor is a third lien upon the said proceeds of lands in the hands of the defendants, and the last aforesaid claim of the plaintiff is a fourth lien on the same, and that both of said claims are to be paid by the defendants out of said pro-

ceeds in the relative order in which the same are next hereinbefore stated in full, if the said proceeds shall be sufficient to pay both of the same in full, and if not sufficient then the claim of the said Louisa N.
217 is to be paid in full, and the claim of the plaintiffs shall be paid as far as said proceeds shall extend to satisfy the same.

10. All the parties, plaintiff and defendant, having at June term, A. D. 1879, of this court filed an agreement in writing waiving any further account, and ascertaining the balance charged on the lands of Thomas P. Devereux for the benefit of Frances Devereux at the date of her decease, in the words and figures following, to wit:

"In this cause the mandate from the Supreme Court of the U. S. is filed, and to avoid the expense and delay incident to taking the account ordered and directed herein by the decision and decree of said court, and because from the accounts already heretofore taken in this cause the parties are able to ascertain by agreement all the results necessary for the final determination of this cause, without the new accounting directed by said decree of Supreme Court, by consent of all the parties, plaintiff and defendant, herein, all further account herein is waived, and it is agreed that the balance charged on the land of Thomas P. Devereux, and which Mrs. F. Devereux had not disposed of during her life, and which, by her will, she appointed to her executors, was, on the 3rd day of June, 1849, the date of her death,
218 the sum of twenty-one thousand five hundred and twenty-seven dollars and sixty-seven cents ($21,527.67)."

11. And the said Louisa N. Taylor having, at June term, 1879, of this court filed a petition to be made a party to this cause and to assert her rights in the premises, and having at said term, by the consent of all the parties, plaintiff and defendant, herein been made a party hereto, and it appearing to the court that said Louisa N. Taylor, on the 26th of March, 1869, before the register in bankruptcy proved and filed her claim on account of the legacy hereinbefore named against the estate of said bankrupt, Thomas P. Devereux, as a debt secured by lien on the lands of the said Thomas P. Devereux, to the amount of $2,926.12, with interest, and the plaintiffs' having here in open court assented to the payment of said claim in the manner specified and directed in this decree, the court doth declare that there is now due to the said Louisa N. Taylor upon the $50.00 annuity, the sum of $1,196.45, with interest on $726.53, from Nov. 24th, 1879, and upon the $150.00 annuity, the sum of $3,413.40, with interest on $2,179.59, from Nov. 24, 1879, charged as hereinbefore declared.

And thereupon it being obvious to the court that a new reference and further account in the premises is entirely useless and unnecessary,
219 it is finally ordered, adjudged, and decreed that the said Louisa N. Taylor recover of the defendants, William J. Hawkins and Walter Clark, assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, and of the said Walter Clark and the defendant, Jno. Devereux, substituted trustees for Thomas P. Devereux, deceased, under the deed for the Pollock land, of July 3rd, 1839, the sum of ($1,196.45) eleven hundred and ninety-six dollars and forty-five cents, with interest on $726.53 thereof, from 24th November 1879, until paid, to be paid and satisfied out of the proceeds of the sales of the said Pollock lands, in their hands, respectively, first, and in preference to all other

claims against said proceeds; and that the plaintiffs, Grinfill Blake and Elizabeth J., his wife, and Jno. Townsend and Georgina P., his wife, do recover of the said defendants, Hawkins, Clark, and Devereux, assignees and trustees as aforesaid, the sum of ($4,569.73) forty-five hundred and sixty-nine dollars and seventy-three cents, with interest on $2,468.34 thereof from the 24th November, 1879, until paid, to be paid out of said proceeds of said sales of said Pollock lands in their hands, respectively, and next in order of preference.

220 And that the said Louisa N. Taylor do recover of the said defendants, Hawkins, Clark, Devereux, assignees and trustees as aforesaid, the sum of ($3,413.40) three thousand four hundred and thirteen dollars and forty cents, with interest on ($2,179.59) twenty-one hundred and seventy-nine dollars and fifty-nine cents thereof from the 24th November, 1879, until paid, to be paid and satisfied out of said proceeds of said sales of said Pollock lands in their hands, respectively, and next in order of preference.

And that the plaintiffs, Grinfill Blake and Elizabeth J., his wife, and Jno. Townsend and Georgina P., his wife, do recover of the said defendants, Hawkins, Clark, and Devereux, trustees and assignees as aforesaid, ($21,200.46) twenty-one thousand two hundred dollars and forty-six cents, with interest on $13,877.66 thereof from the 24th day of November, 1879, until paid, to be paid and satisfied out of the said proceeds of the said sales of the said Pollock lands in their hands, respectively, and in the event that said proceeds shall prove sufficient to pay and satisfy said last-mentioned sum in full, and if said proceeds shall not prove sufficient, then as far as said proceeds shall extend to satisfy the same.

221 That the costs in this cause incurred, to be taxed by the clerk, be paid by the said defendants, assignees and trustees as aforesaid, with and out of said proceeds of said sales of said Pollock lands in full and without reference to the satisfaction of the four foregoing sums adjudged to be paid out of such proceeds. And the cause is reserved.

Signed Dec. 17th, 1879.

HUGH L. BOND,
C't Judge.
G. W. BROOKS,
Dist. Judge.

From which said decision of the court and the decree made in pursuance thereof, the defendants, William J. Hawkins and Walter Clark, assignees &c., of the assets of Thomas P. Devereux, a bankrupt, and Walter Clark and John Devereux, trustees, &c., now and here in open court, all the plaintiffs being present and represented by counsel, crave an appeal to the Supreme Court of the United States, which appeal is allowed by the court, and any further notice of appeal is waived by plaintiffs and each and all of them.

222 And the amount of the supersedeas bond to be filed by the appellants is fixed by the court here at $36,000, but if the defendants shall deposit United States bonds representing the said fund in their hands, to the amount of thirty thousand dollars or other sum, with the clerk of this court, to be held and secured by him under the order of this court, then and in that case the said supersedeas bond may by given for a sum of money equal to the difference between the par value of the bonds so de-

posited, and the said sum of $36,000; said bonds so deposited to the extent of their said par value to operate as a supersedeas.

And the bond for costs of this appeal is fixed by the court at $500, and the clerk of the court will receive and file the same (first ascertaining that the same is solvent and good) at any time within ten days next after the 18th of December, A. D. 1879.

Dec. 19, 1879.

HUGH L. BOND,
C't Judge.

(Endorsed:) Filed December 18th, 1879. N. J. Riddick, clerk.

223 *Suggestions to the court.*

In the circuit court of the United States in and for the eastern district of North Carolina. December term, A. D. 1879.

GRINFILL BLAKE AND OTHERS, PL'FFS, *against* W. J. HAWKINS AND WALTER CLARK AND others, def'd'ts. } No. 1. In equity.

The defendants, W. J. Hawkins and Walter Clark, assignees, &c., of T. P. Devereux, a bankrupt, and Walter Clark and John Devereux, trustees, &c., appointed by the supreme court of North Carolina to hold the fund in controversy pending litigation, respectfully suggest that the decree passed at the present term of the court in this case, substantially absorbs the whole fund in their hands as they are respectively charged therewith; that they are severally entitled to reasonable compensation and allow-
224 ances for their services about and touching the management of said fund, and for reasonable compensation to the counsel they have found it necessary to employ.

They therefore move the court that reasonable allowances in the above-mentioned respects be made to them at this term of the court and charged against said fund.

MERRIMON & FULLER,
Sol's for Def'ts.

(Endorsed:)
Not allowed.

HUGH L. BOND.

Filed December 18, 1879. N. J. Riddick, clerk.

225 *Appeal bond.*

Know all men by these presents that we, W. J. Hawkins and Walter Clark, assignees, &c., of the assets of Thomas P. Devereux, a bankrupt, and Walter Clark and John Devereux, trustees, &c., and W. E. Anderson and P. A. Wiley, are held and firmly bound unto Grinfill Blake and Elizabeth J. D. Blake, and John Townsend and Georgiana P. Townsend, his wife, in the full and just sum of five hundred dollars, to be paid to the said

obligees, their executors, administrators, and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents. Sealed with our seals and dated this the 24th day of December, A. D. 1879.

Whereas lately at a circuit court of the United States, held in and for the eastern district of North Carolina, sitting in equity, in a suit pending in said court between the said obligees, plaintiffs, and the said W. J. Hawkins and Walter Clarke, assignees, &c., as aforesaid, and the said Walter Clark and John Devereux, trustees, &c., as aforesaid, a decree was passed which was unsatisfactory to the said defendants, and from
226 which they craved an appeal to the Supreme Court of the United States then and there in open court, all the plaintiffs being then and there present and represented by counsel, which appeal was then and there granted and allowed by the court:

Now, the condition of the above obligation is such that if the said W. J. Hawkins and Walter Clark, assignees, &c., as aforesaid, and the said Walter Clark and John Devereux, trustees, &c., as aforesaid, shall prosecute their said appeal to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

WALTER CLARK. [L. S.]
J. DEVEREUX. [L. S.]
W. E. ANDERSON. [L. S.]
P. A. WILEY. [L. S.]

(Endorsed:)
This bond is approved and filed December 24th, 1879.
N. J. RIDDICK, *Clerk.*

It appearing to me that the foregoing bond is good and sufficient for all the purposes required, the same is approved. Let the same be filed.
G. W. BROOKS,
Dist. Judge, sitting in Circuit Court.

JUNE 14, 1880.

227 UNITED STATES OF AMERICA,
Eastern District of North Carolina:

Circuit court, 4th circuit.

Certificate of clerk.

I, N. J. Riddick, clerk of the circuit court of the United States within and for the said eastern district of North Carolina, do hereby certify the above and foregoing to be a full, true, and perfect transcript from the record of all the proceedings which have been had in the cause in said court, wherein Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, are complainants, and William J. Hawkins and Walter Clark, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the said Thomas

P. Devereux, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, are defendants, as appears from the records of said court remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Raleigh, in said district, this 10th day of February, 1880.

[SEAL.] N. J. RIDDICK, *Clerk.*

(Indorsement on cover:) No. 261. W. J. Hawkins and Walter Clark, assignees, &c., of T. P. Devereux, a bankrupt, and Walter Clark & John Devereux, trustees, &c., appellants, vs. Grinfill Blake and Elizabeth J. D. Blake and John Townsend and Georgiana P. Townsend, his wife. E. North Carolina C. C. U. S. Filed 4th September, 1880.

108-422

IN THE

Supreme Court of the United States.

No. 261.

W. J. HAWKINS, AND OTHERS, APPELLANTS,

Against

GRINFEL BLAKE, AND OTHERS, APPELLEES.

BRIEF FOR APPELLANTS.

IN THE

Supreme Court of the United States.

No. 261.

W. J. HAWKINS, AND OTHERS, APPELLANTS,

Against

GRINFEL BLAKE, AND OTHERS, APPELLEES.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

1. This cause was heard and a final decree entered therein at June Term, A. D. 1874, in the Circuit Court in the Eastern District of North Carolina. (See decree on page 191 of the Transcript.)

From this decree, the complainants appealed to this Court. In this Court, the cause was argued and determined at October Term, A. D. 1878, and the *Mandate* of this Court, dated the 2d day of June, A. D. 1879, was duly sent to the Circuit Court and filed there on the 9th day of June, A. D. 1879. (See Mandate on page 196 of the Transcript.) And see the case reported, Blake *v.* Hawkins, 98 U. S., 315.

2. At June Term, A. D. 1879, of the Circuit Court, and before any action in the cause had been taken after the filing of the *Mandate* from this Court, Louisa N. Taylor filed her petition in the cause, claiming certain annuities and praying that the same might be declared to be a first charge upon the fund in the hands of the trustees, &c. At the same term of the Court, the defendants filed their answer to this petition, denying the right of the peti-

tioner, &c. (See petition on page 199, and the answer thereto on page 201 of Transcript.)

The further account directed by the *Mandate* from this Court, was waived by stipulation. (See *Agreement* of counsel on page 202 of Transcript.)

3. At November Term, A. D. 1879, of the Circuit Court, a further decree was passed in this cause, purporting to b made in pursuance of and in obedience to the Mandate of this Court. (See this decree on page 204 of Transcript.)

From this decree, the defendants appealed to this Court. The defendants insist, that this decree was not made in pursuance of the Mandate; but on the contrary, the Court undertook to rehear the cause, re-settle the rights of the original parties to the suit, and to change and modify the former decree in material respects not allowed by the opinion and Mandate of this Court; and to introduce into the cause a new party to the suit, and settle her supposed rights, after a final decree had been passed.

ASSIGNMENT OF ERRORS.

1. The appellants assign as error: 1st, that the Circuit Court was bound to observe and pursue the Mandate from this Court strictly, according to its force and effect, and had no power do any thing, other than as directed in the Mandate; it had no authority to re-hear the cause in any respect: that nevertheless, the Circuit Court did not observe and pursue the Mandate, but re-heard the cause, and undertook to re-settle the rights of the parties on grounds substantially different from so much of the former decree as had been affirmed by this Court.

This Court affirmed the decree of the Circuit Court passed at June Term, A. D. 1874, except in a single respect, that in no way changed the rights of the parties except to increase the fund in which the plaintiffs may

share in the same way allowed by the former decree. The Circuit Court declared in that decree, to-wit, the decree of June Term, A. D. 1874, in the first paragraph thereof as follows:

1. "That the testatrix, Frances Devereux, did not, by her last will and testament, appoint the fund of fifty thousand dollars, ($50,000), which, by the deed of July 3rd, 1839, conveying her lands to Thomas P. Devereux, she had power to charge upon said lands, to be part of her general personal estate in the hands of her executors, nor appoint the said fund at all, except so far as is necessary to resort to the same to pay off the pecuniary legacies, bequeathed by her in her said will, after exhausting for that purpose what remains of her general personal assets, after payment of her debts and funeral expenses, and the costs of administering her estate." (See this decree on page 191 of Transcript.)

This court decided, however, that Frances Devereux did exercise and execute the power in her, to the extent of paying the legacies bequeathed by her in her will, and that these legacies were a charge upon the land conveyed to Thomas P. Devereux by the deed of July 3rd, 1839, and that so much of the paragraph as quoted last above, as declared that the general personal assets of Frances Devereux, remaining "after payment of her debts and funeral expenses, and the cost of administering her estate," must first be applied to the payment of the said pecuniary legacies, was erroneous, and reversed the decree of the Circuit Court, only in this respect, and directed the Circuit Court to reform and modify the decree accordingly.

This court said in its opinion, (see Blake *v.* Devereux, *supra*,) on page 328.

"Whether, if the funds which remained in the hands of Thomas P. Devereux at the death of the testatrix, had exceeded the sum required to pay the legacies given by

the will—that is to say, the sum of $28,500—the will would have been a complete execution of the power, covering the whole fund, or only a partial appointment of so much as was needed to pay the legacies, it is unnecessary for us now to decide. In the view which we take of the other questions involved in the case, that fund had been reduced so far, that there was not more than enough remaining subject to the power to pay the sums bequeathed by the will. The execution was therefore complete, and it appointed the whole fund to the executors of this will, who took it under the appointment as part of the personal estate of the appointor." * * * *

There was, therefore, error in the decree of the Circuit Court so far as it adjudged that the testatrix, Frances Devereux did not appoint to her executors the fund over which she had the power of appointment, "except so far as is necessary to resort to the same to pay off the pecuniary legacies bequeathed by her in her said will, after exhausting for that purpose what remains of her general personal assets, after payment of her debts and funeral expenses, and the costs of administering her estate."

And this Court says again on page 331, "Our conclusion, therefore, is, after reviewing the whole case, that there has been no error committed, except the single one which we first noticed. For that, however, the decree of the Circuit Court must be reversed and the case sent back to direct a new accounting, and to enter a decree in conformity with this opinion."

The mandate conformed to the opinion of the Court. After reciting the decree, &c., it proceeds as follows:

"And it is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court, with instructions to direct a new accounting, and to enter a decree in conformity with the opinion of this Court, (6th January, 1879); you, therefore, are hereby commanded, that such execution and further proceedings be had in

said cause, as according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding." (See Transcript, page 199.)

The Circuit Court, in the decree passed at June Term 1874, decreed, that, "Grinfel Blake and Elizabeth J. his wife, and John Townsend and Georgianna P. his wife, do recover of the defendants, William G. Hawkins and Walter Clarke, assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, and of the said Walter Clarke and the defendant, John Devereux, substituted trustees for Thomas P. Devereux, deceased, under the deed for the Pollock land, of July 3rd, 1839, the sum of $722.14, to be paid out of the assets and estate of the said Thomas P. Devereux, in their hands repectively, rateably and *pari passu* with the other debts of the said Thomas P., which have been, and shall be proved by his creditors against said estate and effects, in the hands of said defendants, respectively." (See decree on page 193 of Transcript.)

This paragraph and the last paragraph of this decree, found on the same page, place the plaintiffs, as to the sum of money decreed to them, on an equal footing with all the other general creditors of Thomas P. Devereux, in bankruptcy. They were not entitled to, nor did the decree give them any advantage over any other creditor of Thomas P. Devereux—they were allowed to share in the Court of Bankruptcy with the other general creditors.

This part of the decree was affirmed by this Court. The only effect of the decision of this Court, was, to increase the fund in which the plaintiffs were entitled to share—it left them to share in the increased fund, just as they were allowed to do in the fund mentioned and designated in the decree on page 193 of the Transcript. This was the plain effect of the decision of this Court, and the mandate so directed.

Nevertheless, the Circuit Court in its decree, passed at

November Term A. D. 1879, declared and decreed, (see page 206 Transcript,) as follows:

"9. It is further declared that the said Thomas P. Devereux, before November, 1852, purchased up all the pecuniary legacies bequeathed by the will of the said Frances, and after said purchase, and before the day and date last aforesaid, converted to his own use all the general personal assets of the said Frances specified in section seven of this decree as amounting on the 31st day of May, 1868, to forty one thousand six hundred and thirty three dollars, ($41,633 00,) claiming the same to belong to him to satisfy the said pecuniary legacies and the aforementioned sum of $7,500; and the court doth declare that the annuity of $150 *per annum* bequeathed by the will of the said Frances to the said Louisa N. Taylor was and is a first lien on said sum of $41,633.00 of general assets, and ought to have been first paid thereout, and that the plaintiffs ought to have been paid one-third of said sum of general assets, subject to the burden of one-third of the annuity of $150 per annum to the said Louisa N. Taylor; and that the said pecuniary legacies purchased by the said Thomas P. Devereux as aforesaid, and the sum of $7,500.00 ought to have been paid out of the fund charged and appointed by the last will and testament of the said Frances Devereux on and out of the lands of the said Thomas P. Devereux, and the money to satisfy the same ought to have been raised on and out of said land, and that said lands were exhonerated from said burden by the use by the said Thomas P. Devereux, of the general personal assets aforesaid, whereby the plaintiffs have become entitled to have their aforesaid one third of said general personal assets, burdened as aforesaid, paid out of the proceeds of the said lands in the hands of the defendants, and the said Louisa N. Taylor has become entitled to have the value of her aforesaid annuity of $150 per annum paid to her out of the said pro-

ceeds of the said lands, and in preference to the said claim of the plaintiffs, and it is declared by the Court here, that the last aforesaid claim of the said Louisa N. Taylor is a third lien upon the said proceeds of lands in the hands of the defendants, and the last aforesaid claim of the plaintiff is a fourth lien on the same, and that both of said claims are to be paid by the defendants out of said proceeds in the relative order in which the same are next hereinbefore stated in full, if the said proceeds shall be sufficient to pay both of the same in full, and if not sufficient, then the claim of the said Louisa N. is to be paid in full, and the claim of the said plaintiffs shall be paid as far as said proceeds shall extend to satisfy the same."

Thus the Circuit Court undertook in this decree, to resettle the rights of the plaintiffs and the liabilities of the defendants, and in such way, as to give the plaintiffs a *specific lien* on the fund in the hands of the defendants, and change in a substantial respect, so much of the decree of the Circuit Court of June Term A. D. 1874, as decreed that the plaintiffs should, as to the sum of money due them, share with the general creditors of Thomas P. Devereux, in bankruptcy; and this, notwithstanding this Court had affirmed that part of the decree of June Term A. D 1874, so reversed and modified by the Circuit Court in its decree of November Term A. D. 1879.

In this there was error: 1st. Because the Circuit Court in its last decree did not, in the respect mentioned, pursue or observe the mandate from this Court:

2. Because, if the Circuit Court had had the power to ignore the mandate of this Court, then, there was nothing in the record, or the cause, to warrant the Court in so resettling the rights, and so decreeing a specific lien in favor of the plaintiffs:

3. The Circuit Court in the 8th paragraph of the decree of November Term A. D. 1879, (see Transcript page 206,)

declared and decreed, that Thomas P. Devereux never raised and appropriated the $7,500.00 appointed to him in trust in the will of the said Frances, out of the lands conveyed to him by the deed of July 3d, 1839; that all the annuitants provided for by the ~~apportionment~~ appointment of the $7,500.00 are dead, or have abandoned their claims, except Louisa N. Taylor, who is still living: that none of said annuities have been paid since the first day of January 1863, except the annuity to said Louisa N. Taylor, which was paid by said Thomas P. Devereux up to the first day of January, 1867: that there is a resulting trust for one-third of said sum of $7,500 00, and interest thereon from the first day of January, 1863, to the plaintiffs, subject however to the said Louisa N. Taylor's claim for the value of her annuity of $50.00 per annum, one-third of which value falls upon the plaintiffs' share of said resulting trust; which said claims of the said Louisa N. and the said plaintiffs are first liens upon the lands of the said Thomas P. Devereux, or the proceeds thereof in the hands of the defendants, in the relative order in which said claims are stated and are to be first paid in full by the defendants with and out of the proceeds of said land.

In this there is error:

1. Because the Circuit Court in so re-settling the rights of the plaintiffs, and in allowing the petition and settling the rights of Louisa N. Taylor, ignored, and did not observe and pursue the mandate from this Court:

2. Because there is nothing in the record, or the cause, that warrants such declaration and decree in favor of the plaintiffs, and the said Louisa N. Taylor, and especially, such decree of a first lien in their favor.

3. The Circuit Court in the 11th paragraph of its decree of November Term A. D. 1879, (see Transcript page 207,) declared and decreed as follows: * * * "and it appearing to the Court that said Louisa N. Taylor, on the 26th of March 1869, before the register in bankruptcy

proved and filed her claim on account of the legacy hereinbefore named against the estate of said bankrupt, Thomas P. Devereux, as a debt secured by lien on the lands of the said Thomas P Devereux, to the amount of $2,926.12, with interest, and the plaintiffs having here in open Court assented to the payment of said claim in the manner specified and directed in this decree, the Court doth declare that there is now due to the said Louisa N. Taylor upon the $50 00 annuity, the same of $1,196 45, with interest on $726.53, from Nov. 24th 1879, and upon the $150 00 annuity, the [redacted] of $3,413.40, with interest on $2,179.59, from Nov. 24th 1879, charged as hereinbefore declared."

"And thereupon it being obvious to the Court that a new reference and further account in the premises is entirely useless and unnecessary, it is finally ordered, adjudged, and decreed that the said Louisa N. Taylor recover of the defendants, William J. Hawkins and Walter Clarke, assignees in bankruptcy of the estate and effects of Thomas P. Devereux, a bankrupt, and of the said Walter Clarke and the defendant John Devereux, substituted trustees for Thomas P. Devereux, deceased, under the deed for the Pollock land of July 3d, 1839, the sum of ($1,196.45,) eleven hundred and ninety six dollars and forty five cents, with interest on $726.53 thereof, from 24th November 1879 until paid, to be paid and satisfied out of the proceeds of the sales of the said Pollock land in their hands respectively, first, and in preference to all other claims against said proceeds; and that the plantiffs, Grinfell Blake and Elizabeth J. his wife, and John Townsend and Georgianna P. his wife, do recover of the said defendants Hawkins, Clarke and Devereux, assignees and trustees as aforesaid, the sum of ($4,569.73,) forty five hundred and sixty nine dollars and seventy three cents, with interest on $2,468.34 thereof, from the 24th of November, 1879, until paid, to be paid out of said proceeds of

said sales of said Pollock lands in their hands respectively and next in order of preference.

And that the said Louisa N. Taylor, do recover of said defendants Hawkins, Clarke and Devereux, assignees and trustees as aforesaid, the sum of ($3,413.40) three thousand four hundred and thirteen dollars and forty cents with interest on ($2,179.59) twenty-one hundred and seventy-nine dollars and fifty nine cents thereof, from the 24th of November, 1879, until paid, to be paid and satisfied out of said proceeds of said sales of said Pollock lands in their hands respectively and next in order of preference.

And that the plaintiffs, Grinfel Blake and Elizabeth J., his wife, and John Townsend and Georgianna P., his wife, do recover of the said defendants Hawkins, Clarke and Devereux, trustees and assignees as aforesaid, ($21,200.46,) twenty-one thousand two hundred dollars and forty-six cents, with interest on ($13,877.66) thirteen thousand eight hundred and seventy-seven dollars and sixty-six cents thereof, from the 24th day of November, 1879, until paid, to be paid and satisfied out of the said proceeds of he said sales of the said Pollock lands in their hands, respectively, and in the event that said proceeds shall prove sufficient to pay and satisfy said last mentioned sum in full, and if said proceeds shall not prove sufficient, then as far as said proceeds shall extend to satisfy the same."

In this there is error:

1st. Because it is not so declared and decreed, as to any of the several parties named, in pursuance of the Mandate from this Court.

2d. Because the said Louisa N. Taylor, is not entitled as therein declared and decreed, and any sum due her is not a lien upon the fund in the hands of the defendants, but if any sum of money is due to her at all, then she

must share in the Court of Bankruptcy with the general creditors of the said Thomas P. Devereux.

3d. Because the said Grinfel Blake and Elizabeth J., his wife, and John Townsend and Georgianna P., his wife, are not entitled to the several sums of money decreed to them, and especially, because, any sum or sums of money due to them, is not a lien upon the fund in the hands of defendants, but they are only entitled to share as to any sums of money due to them, in the Court of Bankruptcy with the general creditors of the said Thomas P. Devereux.

4th. There is error, in that the Circuit Court allowed the said Louisa N. Taylor to file her petition—(see same on page 199 of the Transcript)—before or after the filing of the Mandate of this Court.

5th. There is error, in that the Circuit Court did not decree that the annuity of $50 and the annuity of $150 were barred by the lapse of time. (See answer of defendants to petition of Louisa N. Taylor, on page 201 of Transcript.)

6th. There is error, in that the Circuit Court decreed that the annuity of $50 and the annuity of $150 mentioned in the petition of Louisa N. Taylor,—(see page 201 of Transcript)—was a charge upon the "Pollock lands."

7. There is error, in that the Circuit Court failed to sustain the exception of the defendants to account "D," mentioned and referred to in the "Agreement of Counsel," set forth on page 202 of the Transcript.

POINTS OF LAW, &c.

1. An appeal lies, when this Court, having decided a cause on a former appeal, sends its mandate to the Circuit Court, and the latter Court has failed to observe and pursue the mandate of this Court.

The "Lady Pike," 96 U. S. 461.

In that case, the Court says:

"Second appeals will lie in certain cases, when it is alleged that the mandate of the appellate Court hasnot been properly executed; but the appeal in such a case will bring up nothing for re-examination except the proceedings subsequent to the mandate. Needful explanations may be derived from the original record; but the re examination cannot extend to anything that was decided in the antecedent appeal."

The same rule of law is recognized, in
Stewart *v.* Salamon, 97, U. S. 361.
Humphrey *v.* Baker, 103, U. S. 736.

2. The Circuit Court must obey the mandate from this Court, and it has no power to re hear the case, or re-settle the rights of the parties, or to modify in any respect, what this Court has established or affirmed. The power of the Court in such case only extends to the execution of the mandate.

In *Exparte Sibbald*, 12 Pet., 492, this Court said:

"When the Supreme Court have executed their power in a cause before them, and their final decree or judgment requires some further act to be done, it cannot issue an execution, but send a special mandate to the Court below to award it. 24 Sec. Judiciary Act, 1 Story's Laws 61. Whatever was before the Court, and is disposed of, is considered as effectually settled. The inferior court is bound by the decree as the law of the case, and must carry it into execution, according to the mandate. They cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it, further than to settle so much as has been remanded."

To the same effect are
Skillein's Executors *v.* May's Executors, 6 Cr. 26 7.

Exparte Dubuque & Pacific Railroad, 1 Wall. 69.
Exparte Morriss & Johnson, 9 Wall. 605.
Durant *v.* Essex Company, 101 U. S. 555.
In Stewart *v.* Solamon, *supra*, this Court said:

"The effort of the appellant was to open the case below, and to obtain leave to file new pleadings, introducing new defences. This he could not do. The rights of the parties in the subject matter of the suit were finally determined upon the original appeal, and all that remained for the Circuit Court to do, was to enter a decree in accordance with our instructions, and carry it into effect."

To the like effect is,
Humphrey *v.* Baker, 103 U. S. 736.
See Chaires *v.* United States, 3 How. 611.

3. The Circuit Court must pursue the mandate, and its very terms when they are precise: if the terms are uncertain, then the Court may resort to the opinion of this Court to explain the meaning of the same, but in any event, the mandate as explained by the opinion of this Court, must be observed.

West *v.* Brasher, 14 Pet., 51
Mitchell *v.* United States, 15 *Ib.*, 52.
Railroad Company *v.* Soutter, 2 Wall., 510.

4. An examination of the record must make it manifest that the decree in this cause of the November Term, A. D. 1879, of the Circuit Court was not made in compliance with and execution of the mandate of this Court.

The former decree—that of June Term, A. D. 1874—was affirmed by this Court in all respects, save one. The Court says in the last paragraph of Hawkins *v.* Devereux, *supra:*

"Our conclusion, therefore, is, after reviewing the whole case, that there has been no error committed, except the one we first noticed."

That error consisted in this: The Circuit Court had

decreed, that Mrs. Frances Devereux, (see 1st paragraph of decree, on page 191, of the Transcript,) had not exercised and executed the power in her, in the decree mentioned, further than was necessary to pay the pecuniary legacies provided in her will, after exhausting the general personal assets of her estate that remained after the payment of funeral expenses and the costs of administering her estate. This Court, on the contrary, held that she had exercised and executed the power, certainly to the extent of paying the pecuniary legacies provided in her will, to-wit: $28,500. The Court say in Blake *v.* Devereux, *supra*, on page 329:

"There was, therefore, error in the decree of the Circuit Court so far as it adjudged that the testatrix, Frances Devereaux, did not appoint to her executors the fund over which she had the power of appointment, "except so far as it is necessary to resort to the same to pay off the pecuniary legacies bequeathed by her in her said will, after exhausting for that purpose, what remains of her general personal assets, after the payment of her debts and funeral expenses, and the costs of administering her estate."

Now, in the first decree, it was declared as follows:

* * * "That on the 31st day of May, 1868, the date of Thomas P. Devereux's bankruptcy, the said Thomas P. had in his hands, of the general personal assets of Mrs. Frances Devereux, after the payment of $8,424.36 of debts, funeral expenses, and costs of administration. the sum of $41,633, which includes interest to that date.

That, on the same date, he had expended in payment or purchase of the pecuniary legacies, bequeathed by the will of the said Francis, the sum af $39,466.58, which includes interest to that date, which latter sum, being deducted from the former, in accordance with the principles of account, and the directions and instructions set out in the previous part of this decree, leaves a balance in the hands of the said Thomas P. Devereux, at the

date last aforesaid, of the general assets of the said Frances Devereux, deceased, of $2,166.42, for which balance the estate of the said Thomas P., in the hands of his assignees in bankruptcy, is liable to the next of kin of the said Frances; and for one-third of which balance, to-wit; the sum of $722.14, the *feme* plaintiffs, as two of such next of kin, are entitled to make proof in said bankruptcy, against the estate of the said Thomas P., in the hands of his assignees aforesaid."

Thus, it was declared that Thomas P. Devereux had in his hands on the 31st day of May, 1868, $41,633 of the general assets of Mrs. Frances Devereux. He had paid at that date for the pecuniary legacies provided in the will of the said Frances, $39,466.58. The Court, however, decreed that the power had been executed to the extent of requiring Thomas P. Devereux to pay so much of the aid pecuniary legacies, as the general personal assets, after paying debts, &c., were not sufficient to pay, he was credited in accounting with Frances Devereux's estate, with that sum. This accounting left him indebted to the estate of Frances Devereux, in the sum of $2,166.42. Of this sum, $722.14 were decreed to the *feme* plaintiffs, as two of the next of kin, and they were allowed—"entitled to make proof of the same in said bankruptcy against the estate of the said Thomas P., in the hands of his assignees aforesaid."

(See transcript page 193.)

This Court, in reviewing the decree of June Term, A. D. 1874, did not intimate that there was error in so much of the decree as placed the *feme* plaintiffs on the footing of the general creditors of Thomas P. Devereux, as to the sum of money due them respectively, and directed them to share "ratably and *pari passu* with the other debts of the said Thomas P. Devereux. (See page 193, Transcript.)

There is no suggestion in the decree, even by implica-

tion, that the *feme* plaintiffs were entitled, as to the money due them, to have the same decreed to be a charge upon the "Pollock land," or the proceeds thereof, or that the same was a first, second or third lien on the same. This Court affirmed this part of the decree.

The manifest and only effect, of the decision of this Court, was to increase the fund in which the *feme* plaintiffs had the right to share, and to share in the same way as they were allowed by the decree to share the sum of money decreed to them respectively—no other way is pointed out or suggested in the opinion of this Court. The effect was to allow them to share as two of the next of kin of the said Frances, and take one-third of $41,633; to-wit, $13,877.66, instead of one-third of $2,166 42. to wit, $722.14, and to make proof in said bankruptcy against the estate of the said Thomas P. in the hands of his assignees aforesaid, of the larger amount, instead of the smaller amount. And hence this Court, directed that "the case be sent back with instructions to direct a new accounting, and to enter a decree in conformity with this opinion." The mandate so directed.

The new accounting directed by the Court, having been waived by stipulation, (see agreement of counsel on page 202 of Transcript,) it became at once the duty of the Circuit Court, in execution of the mandate, to enter a decree in favor of the *feme* plaintiffs, as two of the next of kin of Mrs. Frances Devereux, deceased, for one-third of the sum of $41,633, to be proved in bankruptcy against the assets of Thomas P. Devereux, deceased, in the hands of his assigns in bankruptcy.

The Circuit Court, however, did not so decree; but it did declare and decree a resulting trust in favor of the *feme* plaintiffs for one-third of the legacy of $7,500, bequeathed to Thomas P. Devereux by the will of Frances Devereux, and that this one-third of said fund, and an annuity of $50 in favor of Louisa N. Taylor, "are *first liens*

upon the lands of the said Thomas P. Devereux, or the proceeds thereof, in the hands of the defendants, in the relative order in which said claims are last herein stated, and are to be first paid in full by the defendants with and out of the proceeds of said lands." (See paragraphs 8 and 11 of decree on pages 206 and 207 of Transcript.)

The Circuit Court further declared and decreed, that the said Louisa N. Taylor had a *third lien* for an annuity of $150, and the *feme* plaintiffs had a *fourth lien* for one-third of $41,633, and interest on the same, on the land of the said Thomas P. Devereux, or the proceeds of the same, in the hands of the defendants. (See paragraphs 9 and 11 of decree on pages 206 and 207 of the Transcript.)

This decree, thus undertaking to establish sundry *liens* in favor of Louisa N. Taylor, and the *feme* plaintiffs, on the fund in the hands of the defendants—indeed, the whole decree of November Term, 1879—seems to be based upon the supposed fact, not upon any ascertained fact, nor any thing settled or embraced by the former decree, that Thomas P. Devereux purchased the pecuniary legacies provided in the will of Frances Devereux from the legatees, with the general assets of the said Frances. It is recited in paragraph 9 of the decree—(page 206 of the Transcript)-- * * * "and that the said pecuniary legacies purchased by the said Thomas P. Devereux, as aforesaid, and the aforesaid sum of $7,500 ought to have been paid out of the fund charged and appointed by the last will and testament of the said Thomas Devereux, on and out of the lands of the said Thomas P. Devereux, and the money to satisfy the same ought to have been raised on and out of said lands, *and that said lands were exonerated from said burden by the use by the said Thomas P. Devereux, of the general personal assets aforesaid,* whereby the plaintiffs have become entitled," &c., and to have the lien, &c.

Now, no lien had been hinted at, much less declared and dereed, in the decree of June Term, A. D. 1874—it had not been declared or suggested as a fact in that decree, that Thos. P. Devereux had purchased the pecuniary legacies with the general assets of Frances Devereux; nor does it so appear in any of the pleadings, or in the evidence in the case, much less is it found as a fact. Indeed, the plaintiffs make no such allegation in the bill, nor do they pray for any such relief.

The last decree does not, therefore, pursue the letter or spirit of the mandate of this Court; on the contrary, it undertakes to re-settle the rights of the parties on totally different grounds from the former decree—it rests on nothing decided, or said, in the opinion of this Court—nor upon anything settled in the former decree, or anything that appears any where in the record.

5. But if the Circuit Court could ignore the mandate of this Court, and re-hear and re-settle the rights of the parties, (as it is plain it could not,) then there is nothing in the whole record that warrants the last decree.

The plaintiffs go upon the ground, that the pecuniary legacies provided in the will of Frances Devereux were purchased by Thomas P. Devereux, *with her general personal assets, he using the same for that purpose;* whereas, Thomas P. Devereux ought to have paid them, or to have purchased them, with his own money, or with the proceeds of the land conveyed to him by the deed of 3rd of July, 1839; and it is insisted, that the plaintiffs are entitled to have this land, or the proceeds thereof, *subrogated* or *substituted*, to their use and benefit, in place of the general personal assets of Frances Devereux, which it is now alleged Thomas P. Devereux used in purchasing the pecuniary legacies.

The record no where shows, that this claim of lien, was ever hinted at, much less set up seriously, until the Novem-

ber Term, A. D. 1879, of the Circuit Court. The plaintiffs do not allege in their bill that Thomas P. Devereux purchased the legacies with the general personal assets of Frances Devereux—they do not pray for any relief on such ground. (See bill on page 6 and prayer of same on page 12, and amended bill on page 37, and prayer of bill on page 42, Transcript.) There is nothing in the answer of Thomas P. Devereux, tending to imply that he so purchased the legacies—on the contrary, he answers and avers that he purchased the legacies solely for the benefit of himself. (See his answer on page 68 of Transcript.)

The evidence no where even tends to show that he purchased the legacies with Mrs. Frances Devereux's assets.

There is nothing in the pleadings—nor is there anything found in any decretal order, or in any decree, that supports such suggestion—the decree seems based on a suggestion merely. In the decree of June Term, A. D. 1874, it was admitted that, * * * "he had expended in payment or purchase of the pecuniary legacies bequeathed by the will of the said Frances, the sum of $39,466.58, which includes interest to that date," (31st May, 1868,) &c., &c. This surely cannot be held to imply that he paid or purchased the legacies with money other than his own. The whole record, all the accounts, evidence, &c., go to show that Mr. Devereux was a gentleman of large means, and the presumpion is, the reasonable inference is, that he purchased with his own money.

If the plaintiffs intended to set up such a claim of lien, they ought to have alleged and proved such a state of facts as would entitle them to such relief as that provided in the decree of the Circuit Court, now brought under review. As appears by the whole case, the debt due from Thomas P. Devereux to the estate of Frances Devereux, deceased, stood on the same footing—and no other, as any other ordinary debt due to any other person, and therefore it was in all respects proper, that any sum decreed to the

feme plaintiffs should be proved in bankruptcy and share "ratable and *pari passu* with the other debts of the said Thomas P., which have been, or shall be proved by his creditors against said effects, in the hands of said defendants, respectively." (See Transcript, page 193.)

6. It is declared in parapraph eight of the last decree—see transcript page 206—* * * "and the Court doth declare that there is a resulting trust for one third of said sum of $7,500.00, and interest thereon from the 1st day of January, 1863, to the plaintiffs, subject, however, to the said Louisa N. Taylor's claim for the value of her annuity of $50 per annum," &c, &c., and the decree is to the same effect.

By her will, Frances Devreux bequeathed as follows:

"Item 8th. I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes." (See will on page 21 of transcript.)

Then, it is provided that Thomas P. Devereux shall pay sundry annuities, aggregating the annual interest on said sum of $7,500.00.

It is no where in the will provided in terms, that the principal of the fund shall go to Thomas P. Devereux when the annuities provided for shall cease, and it is scarcely worth while to consider whether the effect of the will is to give him the fund; for if it does not, (and this is not conceded,) the deed of the 3rd of July, A. D. 1839, provides as follows:

* * * "But if the said sum of money, or any part thereof, shall remain unpaid, or shall not be invested during her life, and if the said Thomas shall not by deed, or will, or writing in the nature thereof, or by some other act give, grant, dispose, or direct any payment, or application of the same, then the said sum of money, or so much thereof as shall remain not paid, given, granted,

disposed, or directed to be invested, paid, or applied, shall be considered as lapsing, and the charge therefor as extinguished for the benefit of the said Thomas." (See deed on page 15 of Transcript.)

So that in any view of the question, the fund went to Thomas P. Devereux.

7. Louisa N. Taylor was allowed to come into the case by petition, in which she claimed annuities, &c., &c., after the mandate of this Court was filed, and before the last decree, and the court heard her case upon the petition, and decreed relief in her favor, &c. (See her petition on page 199 of Transcript.)

It is insisted that this was, to say the least, a very irregular proceeding. The Circuit Court was bound to obey the mandate of this Court, and could do no more; but in this respect, it undertook to make a new party and a new suit, to hear the new cause and decree relief, thus interfering with the mandate of this Court, deranging and contravening its provisions. The petitioner might have brought her separate suit; or she might, perhaps, before this cause was heard, have been made a party in some way, and the bill might have been amended. She came too late to be heard in this cause. The acceptance of service of petition by counsel was an act of courtesy, a measure of convenience, and not an agreement to waive all exception to such a method of procedure. The claim was resisted.

8. The Circuit Court decreed that the $50 annuity to Louisa N. Taylor, (see decree on pages 206 and 207 transcript) was a *first lien* upon the assets of Thomas P. Devereux, in the hands of the defendants.

If it be granted (as it is not), that this annuity might be a lien upon the "Pollock lands," or the proceeds thereof, it does not appear as a fact ascertained, nor does it appear in the evidence, or in any way in the record, that the assets in the hands of the defendants, *were the*

proceeds, or any part thereof, of the Pollock lands. So far as appears, these assets were the general assets belonging to the estate of Thomas P. Devereux, arising from no particular source. Mr. Devereux had been a man of large wealth, and his personal property, his income, his cash, came from a multiplicity of sources. At all events, *it does not appear in the record, that this fund in question was of or grew out of the "Pollock lands."*

It could hardly be contended, that this annuity was a *first lien* upon the general personal assets of Thomas P. Devereux!

9. As to the annuity of $150 to Louisa N. Taylor, decreed to be a *first lien*, or a lien at all, on the said sum of $41,633.00, it is manifest that it could not in any case, be a charge upon the lands, or the proceeds thereof, conveyed to Thos. P. Devereux by deed of July 3d, 1839. The will in terms, makes this annuity chargeable specially upon a fund to be raised by "*the sale of the above slaves and the house and lo in Chapel Hill.*" (See petition of Louisa N. Taylor page 200, and the 10*th item* of Mrs. Frances Devereux's on will on page 22 of Transcript.) The language of the will is: "*From the funds* arising from the sale of the negroes above mentioned, and the house and lot in Chapel Hill, it is my will," &c. Note, that this legacy is to be paid out of this, a particular fund, and it is not a legacy to be paid at all events out of the estate—and it depends on the fund designated and provided for.

The duty of raising this fund as directed by the will, devolved upon the executors thereof. Thomas P. Devereux was not—never qualified as, an executor—he renounced his right to qualify as executor. The annuity was not to be paid out of any fund in his hands, or over which he had any control. It nowhere appears in the transcript, that "Thomas P. Devereux sold the house and lot in Chapel Hill, received the proceeds, and converted the slaves to his own use to the amount of $9,995.50, if not more," as

alleged in the petition of Louisa N. Taylor, on page 200 of Transcript. Indeed, it does not appear, that the fund was ever raised and set apart as directed by the will—it does not appear that the negroes were ever sold, and it is said in the pleadings on page 201 of the Transcript, that the house and lot in Chapel Hill was sold for $45. This annuity was not chargeable generally upon the assets of Mrs. Frances Devereux—the special fund out of which it was to be paid does not seem ever to have been raised; and the annuitant does not appear to have ever taken any steps to have it raised or ascertained and set apart. How then, can she charge the lands of Thomas P. Devereux, or the proceeds thereof; or the general assets of Frances Devereux?

This Court take this view of this annuity in its opinion in Blake *v.* Hawkins, *supra*—see page 327.

10. But if the said Louisa N. Taylor can be heard to set up her supposed claims, as she seeks to do, and as the same are specified in her petition in this case, (see transcript, page 199), then the same are barred in this Court by lapse of time, in analogy to the bar of the statute of limitations in a court of law.

Battle's Revisal, ch. 17, s. 34.

Story's Eq. Jur., ss. 64a and 529.

The relation of *cestui que trust* and trustee, did not exist between the legatees and annuitants provided for in said will and Thomas P. Devereux. The relation was more like that of debtor and creditor. Blake *v.* Hawkins, *supra*, page 331.

11. As the court proceeded to re-hear the cause, and to hear that of Louisa N. Taylor, and to re-settle the rights of the parties, it surely ought to have considered and sustained or overruled the exception to account "D" mentioned in the "Agreement of Counsel," set forth on page 202 of the transcript. The evidence shows that Thomas P. Devereux did not in his lifetime sell the negroes be-

longing to the estate of Frances Devereux, nor does it show that he took possession of them. The slaves were divided between Thomas P. Devereux and his sister Mrs. Polk, about January, A. D. 1853, with the assent of the administrator of Frances Devereux; he got one half of them and kept them until property in them was destroyed by the results of the late war. (See answer of Thomas P. Devereux, on pages 66 and 110 of Transcript.)

It is difficult to see upon what grounds or principles of justice, the plaintiffs can insist that the assets of Thomas P. Devereux shall be charged with the value of all the slaves.

The plaintiffs contend, that the defendants are barred in this respect by the said decree of June Term, A. D. 1874. This is an erroneous view of that decree. It provides, (see page 191 of Transcript) * * * * "and also to an account of so much and such parts of the general personal estate of the said Frances, including the negro slaves divided between the said Thomas P. and the defendant, Leonidas Polk, in October, 1852, *as came to the hands of the said Thomas P. after the decease of the said Frances;* but the said Thomas P. is not liable to account with the plaintiffs generally, as executor of the last will and testament of the said Frances," &c., &c.

Giving this clause of the decree a fair construction, especially in view of the fact that Thomas P. Devereux got but one half of the negro slaves, it does not, and was not intended, to charge his assets with but one half of their value; but *one half* of the slaves "came to the hands of the said Thomas P. after the decease of the said Frances." Wherefore, then, should his assets be charged with the value of all the negro slaves?

A. S. MERRIMON,
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Counsel for Appellants.

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A. S. MERRIMON,
T. C. FULLER.
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES.

No. 261.

WM. J. HAWKINS AND WALTER CLARK, ASSIGNEES IN BANKRUPTCY OF THE ESTATE AND EFFECTS OF THOMAS P. DEVEREUX, DECEASED, A BANKRUPT, AND WALTER CLARK AND JOHN DEVEREUX, TRUSTEES, SUBSTITUTED FOR THOS. P. DEVEREUX,

Appellants,

VS.

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, HIS WIFE, AND JOHN TOWNSEND AND GEORGIANA P. TOWNSEND, HIS WIFE,

Appellees.

BRIEF FOR LOUISA N. TAYLOR.

FABIUS H. BUSBEE,
JOHN W. HINSDALE,
Counsel for Louisa N. Taylor.

SUPREME COURT OF THE UNITED STATES.

No. 261.

WM. J. HAWKINS AND WALTER CLARK, ASSIGNEES IN BANKRUPTCY OF THE ESTATE AND EFFECTS OF THOMAS P. DEVEREUX, DECEASED, A BANKRUPT, AND WALTER CLARK AND JOHN DEVEREUX, TRUSTEES, SUBSTITUTED FOR THOS. P. DEVEREUX,

Appellants,

VS.

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, HIS WIFE, AND JOHN TOWNSEND AND GEORGIANA P. TOWNSEND, HIS WIFE,

Appellees.

BRIEF FOR LOUISA N. TAYLOR.

FABIUS H. BUSBEE,
JOHN W. HINSDALE,
Counsel for Louisa N. Taylor.

IN THE

Supreme Court of the United States.

No. 261.

WM. J. HAWKINS and WALTER CLARK, Assignees in Bankruptcy of the estate and effects of THOMAS P. DEVEREUX, deceased, a Bankrupt, and WALTER CLARK and JOHN DEVEREUX, Trustees, substituted for THOS. P. DEVEREUX,

Appellants,

Against

GRINFILL BLAKE and ELIZABETH J. D. BLAKE, his wife, and JOHN TOWNSEND and GEORGIANA P. TOWNSEND, his wife,

Appellees.

Brief of FABIUS H. BUSBEE and JOHN W. HINSDALE, Counsel for LOUISA N. TAYLOR.

STATEMENT OF FACTS.

The facts necessary to be stated in reference to the petition of Louisa N. Taylor, are as follows:

The 8th item of Mrs. Frances Devereux's will is:

"I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs and assigns, the sum of $7,500, in trust, for the following purposes:

First. To Miss Louisa Taylor, daughter of Mrs. Eliza Taylor, fifty dollars annually during her natural life."

* * * * * (record, p. 21).

And the 10th item is:

"From the funds arising from the sale of the above slaves, and the house and lot in Chapel Hill, it is my will that at the death of Mrs. Eliza Taylor, her daughter, Louisa, shall receive the further sum of one hundred and fifty dollars annually during her natural life; or should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum during her natural life, over and above the sum of fifty dollars per annum heretofore provided for her, the same to be paid the said Louisa Taylor by my executors annually." (record, p. 22).

Mrs. Eliza Taylor reached the age of sixty years in April, 1860.

The annuities were paid regularly up to 1867. In 1868 Thomas P. Devereux was declared a bankrupt. In his schedule filed in the bankrupt proceedings, these annuities were declared a charge upon the lands conveyed to him, by his mother, by the deed mentioned in the record, p. 15, to-wit, the Pollock lands.

In March, 1869, L. N. Taylor proved her debt in bankruptcy, consisting of two unpaid annual instalments of the annuities, and the value of the annuities at the age of the annuitant; and in her proof of her debt she claimed, that the amount was a charge upon the said lands.

The amount of the value of the annuities has not been, and is not now questioned. Since her proof of debt, almost the entire estate in the hands of the assignees in bankruptcy has been held to await the result of this litigation, and the assignees could take no final action upon her claim for a lien upon the Pollock lands or the fund arising from their sale.

When this Court decided in *Blake* v. *Hawkins*, 98 U. S. Reports 315, that the will of Frances Devereux was an

execution of her power of appointment under the deed, a new accounting was directed.

After the mandate was received at June Term 1879, the said L. N. Taylor filed her petition in the cause, (record. pp. 199, 200, 201.) All the parties, appellants and appellees, accepted service of the petition, and agreed in writing that it might be heard if practicable at June Term 1879, (record p. 201). The appellants filed their answer, (p. 201, 202). The Court found as a fact, that the petition was filed by consent, and that Louisa Taylor was made a party to the suit by consent of all the parties, (record, p. 207). The answer raises no objection to her becoming a party, nor to the consideration of her equities, (if she has any), by the Circuit Court.

The facts concerning the action of Thos. P. Devereux in regard to the real and personal estate of Mrs. Frances Devereux, sufficiently appear in the brief of the appellees, Blake and others.

BRIEF OF ARGUMENT.

FIRST. Louisa N. Taylor is a proper party to this suit, having an interest in the fund, which it is proposed to distribute, and can intervene at any time before a final decree.

1. We submit that this is not a matter for the appellate Court. No question of jurisdiction is raised; in fact upon page 21 of the appellants' brief, it is said, "she might, perhaps before the cause was heard, have been made a party in some way, and the bill might have been amended." And the sole objection seems to be, "she came too late to be heard in this cause."

But it appears from the decree that *all the parties expressly consented* that Louisa N. Taylor be made a party. This is further shown by the answer of the appellants to the petition, (record, p. 201, 202,) which raises no objection whatsoever to the *consideration* of the claim, or to making Louisa N.

Taylor a party, but only objects to the claim itself, and pleads the statute of limitations.

2. It is obvious that there can be no satisfactory decree until she becomes a party. As long as the decree of 1874 stood unreversed she was not a necessary party, as her claim that the annuity is a charge upon the real estate only arises, when the will is declared to be an execution of the power of appointment. But, after the decision in 98 U. S., 315, she becomes almost a necessary party, (unless her interest can be represented by the administrator, *d. b. n. c. t. a.* of Mrs. Frances Devereux); certainly, one whose interests are affected.

3. The general doctrine undoubtedly is, that all persons interested in the subject matter should be joined, or at least, may be joined.

And, it is said that the Supreme Court will not make a decree, unless all the persons essentially interested are before the Court. *Russell* v. *Clark*, 7 Cranch, 69.

So, "all persons materially interested in the subject of a suit in equity ought to be parties to it, either as plaintiffs or defendants, that a complete decree may be made between these parties." *Story* v. *Livingston's Ex'rs*, 13 Peters, 359. And to the same effect, *Caldwell* v. *Taggart*, 3 Peters, 190.

The method, (to which there seems to be no specific objection made by the appellants,) is pointed out in *Morris* v. *Banley*, 2 J. J. Marshall (Ky.) 374: "If a person's interest is likely to be affected by a suit in chancery, it is his right and duty to make himself a party, by petition in the nature of a bill of interpleader."

As to the form *vide*, 3 Daniel's Ch. Prac. 1801.

4. The main objection of the appellants seem to be that it is too late. But this will not be found in accord with the decisions.

In the matter of Howard, 9 Wall. 175, there was a petition filed by a claimant to a fund, after the mandate of this court had been sent down. The court says that "when

there is a fund in court to be distributed among different claimants a decree of distribution will not preclude a claimant from asserting by bill or petition his right to share in the fund." Again,

"Parties, asserting a right to share in a common fund in the custody of the court, and presenting a *prima facie* case in support of such asserted right, are entitled to be heard at any time before its actual distribution, although a decree ordering such distribution in a litigation between other parties may have been entered."

See also, *Gillespie* v. *Alexander*, 3 Russell, 130, and *Williams* v. *Gibbes*, 17 How., 257, cited with approval in "*In the matter of Howard, ubi supra; David* v. *Frowd*, 1 My. and K., 200; *Greggs* v. *Summerville*, 1 Russ. and M. 338; *Brooks* v. *Gibbons*, 4 Paige, 374; Story Eq., Pl., Sec. 106.

SECOND. Whether Louisa N. Taylor is a proper party or not; or was improperly allowed to intervene, is no ground of error, because—

1. The administrator *d. b. n. c. t. a.* of Frances Devereux is a party; and in the absence of Louisa N. Taylor, it would have been proper to decree that he recover the several amounts due her in order to pay them over to her. Enough appeared outside of her petition to authorize such a decree. See pleadings and proofs and admission of counsel, page 202, of the record.

2. It is entirely immaterial to the appellants whether Louisa N. Taylor's legacies are adjudged to be paid directly to her or to an administrator for her.

3. The appellants have not only accepted service of her petition (see record, page 201), but the decree shows that they actually consented to her being made a party to this case, for the purpose of ascertaining her right in the premises, (see record, page 207). Their objection to what has been a matter of consent, is untenable.

THIRD. The decree of 1879, is in pursuance of the mandate.

1. The Supreme Court have in substance decided that Frances Devereux's will was an execution of the power of appointment, reserved in the deed of 1839, and it was an appointment of the fund to her executors, converting all that remained of it on June 3, 1849, the time of her death, to-wit: $21,627.67, (see record page 202,) into her own general personal estate in the hands of her executor, (98 U. S., 328). The Pollock lands, conveyed to T. P. Devereux by deed of 1830, were thus charged in favor of the executor of Frances Devereux. It is nowhere pretended by appellants that this fund has been raised out of the land. The whole record shows that this fund has never been raised. Therefore, the Pollock lands, remain so charged to this day. The Supreme Court, having declared this fund to be in existence, remanded the case to the Circuit Court, to enter a decree fixing its amount and disposing of it according to law. This is all that the court has done in the decree of 1879. It cannot be said that the court has reheard the cause, or settled the rights of the parties, but it has simply carried the mandate, as explained by the opinion of the court, into effect. No questions of lien arose under the first decree, because the court held that there had been no appointment, and consequently no fund subject to liens. These questions naturally and necessarily arose when this ruling was reversed.

2. The mandate of the Supreme Court must be construed as a whole, and while it decides that the only error in the first decree was in holding that Mrs. Devereux had not appointed, &c., the reversal of this ruling necessarily effects that part of the first decree which adjudges that the plaintiffs are entitled to make proof in bankruptcy against the estate of Thos. P. Devereux, of $722.

The effect of the decision of the Supreme Court was to declare that a certain specific fund, which had never been confused with the estate of Thos. P. Devereux, and which has always remained a part of the general personal assets of the testatrix, shall be distributed under the decree of the

Circuit Court—not as a portion of the estate of Thomas P. Devereux in bankruptcy, but as a fund held in trust for the beneficiaries of Frances Devereux's estate.

3. The Circuit Court may have erred in its conclusions of law. but its decree is clearly an attempt to apply the law, as declared in 98 U. S., 315, to the new account, the items and amounts of which are agreed upon between the parties

An examination of the cases, cited in the brief of appellants, will show that none of them are in conflict with this view.

We admit, and contend, as declared in *The Lady Pike*, 96 U S., 461, that the appeal brings up nothing for re examination except the proceedings subsequent to the mandate.

So, we agree with the plaintiff in denouncing the unruly defendants, who, in *Stewart* v. *Salaman*, 97 U. S., 361, attempted, after a mandate, to make new defences.

In *Humphrey* v. *Baker*, 103 U. S., 736, there was a peremptory order that the plaintiff in error should make a conveyance, and of course he was obliged to obey after the mandate.

In *Skillern* v. *May*, 6 Cr., 267, the decision was, that it was too late to question the jurisdiction after the mandate—and to the same effect is *Washington Bridge Co.* v. *Stewart*, 3 How., 413.

In *Ex Parte Dubuque & P. R. R.*, 1 Wall., 69, it was held that it was too late to grant a new trial after a mandate to enter judgment for the defendant.

And to the same effect, the other cases cited, *vide*: *Sibbald's case*, 12 Peters, 480; *Ex parte Morris & Johnson*, 9 Wall., 605; *Durant* v. *Essex Co.*, 101 U. S., 555; *Chaise's Ex'rs* v. *United States*, 3 How., 611.

In *R. R. Co.*, v. *Soutter*, 2 Wall., 510, it is said that the mandate must not be followed to work injustice. To the same effect, *West* v. *Prasher*, 14 Peters, 51.

Here, there is a mandate reversing the decree of 1874,

and directing a new accounting. The new account having been agreed upon, the Court attempts to pass upon the rights of the parties, and of a new party who is interested in the subject matter and joined by consent.

FOURTH. The decree of 1879, which recognizes Louisa N. Taylor's right to participate in the distribution of the fund, is proper.

1. The $50 annuity was specially charged upon the said Pollock lands, being directed by the 8th item of the will to be paid out of the $7,500 legacy to T. P. Devereux, which was a charge upon the lands. It is not contended, that the $7,500 fund was ever raised, and it remains a charge upon the lands.

We regard this as settled by the decision in 98 U. S., 315, and we fail to see where it is seriously questioned by the appellants.

It was conceded below, and as no point is made in the brief of the appellants, it is conceded in this court, that the value of the annuity and the two unpaid installments, with interest, was at the date of the decree of 1879, $1196 45, with interest on $726.53, from Nov. 24, 1879, (the first day of the term). No mistake in the amount is assigned as error here.

2. The $150 annuity, by the 10th item of the will, was to be paid out of the proceeds of the sale of the negroes and the house and lot in Chapel Hill. These failing, or proving insufficient, the annuity must be paid out of any funds belonging to the testatrix's estate, and this before the next of kin shall receive a distributive share. 1 Roper on Legacies, 192; 2 Williams on Executors, 1043, and authorities cited in note *g*.

This annuity is made a charge upon the house and lot in Chapel Hill (which sold for only $45) and upon the negro slaves directed to be sold by the executors. The legacies in the first six items of the will are directly chargeable upon the lands, under the power of appointment. Thos. P. Devereux purchased them one by one; and when all except

the annuities were thus owned by him, he says in his answer that he then felt in a position to repair the damage done to his sister, Mrs. Polk, by his mother's dissent from his father's will, (see answer T. P. D. record p. 69), and he, treating the negroes as his own, divided them between his sister and himself. His sister rightly regarded this as a gift from him, (record, p. 69.) The decree, (p. 191) now *res adjudicata*, fixes him with the value of all these slaves.

3. When one legacy is charged on the real and personal estate, and another on the personal alone, and the first exhausts the personalty, the other shall stand in its place and become a charge upon the land. *Hamley* v. *Fisher*, 1 Dick. 104. So also, when several legacies were charged on the land, and others were not so charged, and the personal estate was exhausted in paying for an undivided interest in land bought but not paid for before the testator's death, if the legacies charged on the real estate are paid therewith, the other legatees shall stand in their place on the land. *Bligh* v. *Darnley*, 2 Peere Williams, 620. The doctrine is approved in 2 Williams on Ex'rs, 1555.

4. It has been agreed that $21,527.67 was the balance charged on the lands, which Mrs. Devereux appointed June 3, 1849. This, with interest at 6 per cent. to May 3, 1868, amounts to $45,940.04. It is declared, in the decree of 1874, that T. P. Devereux, on May 31, 1868, had expended in the payment or purchase of pecuniary legacies the sum of $39,466.58, including interest. This deducted from the balance of the fund charged on the land, to-wit, the 45,940.04, leaves a residue of $6,473.46 still charged upon said lands, which is a part of the general personal estate of Frances Devereux in the hands of her administrator, *d. b. n., c. t. a.*, and is applicable to the payment of any unpaid legacies.

5. It appears from the decree of 1874, that T. P. Devereux received of the general personal assets of Mrs. Frances Devereux $41,633.00, and he expended in the payment or purchase of pecuniary legacies, bequeathed, in the will of said

Frances, the sum of $39,466 58. This was either the expenditure of the general personal assets to purchase or pay the legacies which were charged upon the Pollock lands, or else it was a re-imbursement out of the general personal assets, for the amount advanced by T. P. Devereux from his own estate in the purchase and payment of said legacies, which is, in effect, the same. Louisa N. Taylor, and after her, the distributees of Frances Devereux are subrogated to the rights of the said legatees, as against the Pollock lands, upon which their legacies were charged, by reason of the fund, to which Louisa N. Taylor and the next of kin look, having been diverted to the payment of the said legacies and the relief of the lands for their charge. *Redmond* v. *Burroughs*, 63 N. C., 242.

6. But, suppose that T. P. Devereux never used the personal assets of the said Frances in the purchase of her pecuniary legacies, and that he never re imbursed himself for the purchase of said legacies with his own money, still, it appears that he is chargeable with the $41,643 00, as upon a *devastavit*. Having purchased the legacies with his own money, he stood in the shoes of the several legatees, just as if he had been named a legatee for the amount so paid by him; but, had he been so named as a legatee, and had he committed the *devastavit*, which has been found against him, a court of equity would oblige him to make good the amount of his *devastavit* before he should take the benefit of his legacy; and, if necessary, the legacies purchased by him will be applied to make good his *devastavit*, in order to save from loss those who would be injured by such *devastavit*. *Morris* v. *Livie*, 1 Younge & Collier 380; *Hemly* v. *Fisher*, 1 Dick, 104; *Selby* v. *Selby*, 4 Russ. 336; *Bligh* v *Darnly*, 1 P. Williams, 619.

7. When Frances Devereux appointed the entire balance charged upon the Pollock lands which she had not disposed of during her life, for the purpose of paying legacies, T. P. Devereux had no interest in this fund, except as distributee

of said Frances; although, by reason of the lapse or compromise of some of the legacies, it was not all needed to pay legacies. The residue fell into the general personal estate of Frances Devereux.

In *Brickenden* v. *Williams*, L. R. 7 Eq. Cas., 310, by a marriage settlement a fund was settled upon such trusts as the wife should, notwithstanding coverture, by deed or will appoint; and in default of appointment, in case (which happened) there should be no issue of the marriage, in trust for such persons, as should at the death of the survivor of the husband and wife, be the next of kin of the wife. By her will, which purported to be in exercise of the power, the wife devised and bequeathed all her real and personal estate over which she had any disposing power, to her executors therein named. She then gave several legacies, which did not exhaust the fund, and appointed executors. She died in her husband's lifetime: *Held*, that the fund was, by the appointment, all converted into the wife's general personal estate, and hence that the unexhausted portion belonged to the husband, and not to the person entitled in default of appointment under the settlement.

Where the residue was bequeathed to an executor upon trusts, which did not exhaust the property, he was held to be a trustee of the unexhausted portion for the next of kin (*i. e.* as against himself). *Dawson* v. *Clark*, 15 Ves. 409; *Dawson* v. *Clark*, 18 Ves. 247; *King* v. *Denison*, 1 V. & B., 260. This principle applies where the gifts, which do not exhaust the fund, are by way of appointment, and there is a gift over in default of appointment. Jarman on Wills, 3 Ed., vol. 1, p. 651; *Chamberlain* v. *Hutchison*,, 22 Bear. 444; *Lefearge* v. *Freelan*, 24 Beau, 403. See *Morris* v. *Bishop of Durham*, 10 Ves 535; *Gloucester* v. *Wood*, 3 Hare, 131, 147; *Collins* v. *Wakeman*, 2 Ves. Jr., 683; *Robinson* v. *McDairmid*, 87 N. C., 45[illegible]; Adm. Eq., 32–33; Hill on Trustees, 114; Story Eq. Jur., Sec. 1196 *a*. Therefore, the residue of $7,500, which was specifically charged upon the lands and bequeathed to

T. P. Devereux in trust to pay certain legacies, all of which have been abandoned or extinguished, save one, is now subject to the payment of the $50 annuity to Louisa N. Taylor. The balance of this fund after paying the $50 annuity has fallen into the general personal estate of Frances Devereux; and is liable to pay the $150 annuity to said Louisa, as a first charge.

8. When T. P. Devereux went into bankruptcy, he held the Pollock lands charged with a certain sum residue, in favor of Frances Devereux's estate. And this was a claim whose security would be respected by the bankruptcy court. This fund was never intermingled with the private estate of Thos. P. Devereux; but it is a separate trust fund, which a court of equity will protect. The lands of Thomas P. Devereux, subject to this charge, may have come within the jurisdiction of the bankrupt court; but the charge or claim itself was an asset of the estate of Frances Devereux, to be raised out of the lands and paid over to her legatees or next of kin, or to her administrator, *d. b. n. c. t. a.*, for them.

FIFTH. It is stated by the counsel for the appellants that the Circuit Court decreed that the $50 annuity to L. N. Taylor, (see decree on pp. 206 and 207 of record) was a first lien upon the assets of Thos. P. Devereux in the hands of the defendants; and they also say, that it does not appear in any way, that the assets in the hands of the defendants are the proceeds of the Pollock lands. The decree does not undertake to make the $50 annuity a first charge upon the assets of T. P. Devereux in bankruptcy, but it does make the said annuity a first lien upon the lands conveyed to T. P. Devereux by the deed of July 3, 1839. This deed describes the lands as having been owned by the late Geo. Pollock. (See record, page 43.) It appears that T. P. Devereux owned these lands when he went into bankruptcy, for it nowhere appears in the record that he disposed of them since they came into his possession in 1839. On the contrary, he re-

turned them in his schedule in bankruptcy, as lands owned by him and subject to the charge of Louisa N. Taylor's annuity. Therefore these lands passed to his assignees in bankruptcy or to his trustees, subject to any liens theretofore existing, which liens are expressly preserved by the bankrupt act.

The petition of Louisa N. Taylor alleges that, on May 21, 1868, T. P. Devereux was declared a bankrupt upon his own petition: that assignees were elected, and thereafter, under the provisions of the bankrupt act, trustees were appointed, &c., as fully appears from the petition herein; that the trustees have sold the lands mentioned in the will and deed, to wit: the Pollock lands, and hold the proceeds under the order of this court subject to any just charges for the same. This allegation is not denied in the answer to the petition. The decree directs the legacies to be paid out of the proceeds of the sales of said Pollock lands, in the hands of the defendants respectively.

If the defendants have not sold the lands, and consequently have no proceeds of sales in their hands, they will have nothing to account for, and are not affected by this portion of the decree, and therefore cannot complain. It is, however, manifest from the record that the defendants have either the Pollock lands or its proceeds in hand.

The appellees are content with the decree in its present shape, apprehending no difficulty in showing that the defendants have in hand the proceeds of the Pollock lands sold by them under a written stipulation, duly signed by opposing counsel, that said lands should be sold and the proceeds should stand to all intents and purposes in their stead. The said stipulation is in the hands of the appellees counsel and will be produced and filed in this cause, if permitted by this honorable Court.

SIXTH. As to plea of the statute of limitations. The claim was proven in the bankruptcy court not many months after

the adjudication, and has ever since been pending before that tribunal. Until this suit shall have been decided, no steps can be taken in the bankruptcy proceedings. The petitioner is in no laches.

But the statute does not run against a legacy or a trust estate. Nor is laches imputed in any event until the expiration of twenty years. Iredell on Executors, p. 711, § 37; *Bird* v. *Graham*, 1 Ire. Eq., 196; *Hall's case*, 2 Vent., 346; *Higgins* v. *Crawford*, 2 Ves. Jr., 672.

FABIUS H. BUSBEE,
JOHN W. HINSDALE,
Counsel for Louisa N. Taylor.

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No. 26

OCTOBER TERM, 19

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Appellants

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Appellees

Appellants' Brief [illegible]

Submitted by

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FABIUS H. BUSBEE,
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OCTOBER TERM, 1883.

W. J. HAWKINS and OTHERS, Appellants,

AGAINST

GRINFILL BLAKE and WIFE and OTHERS, Appellees.

ARGUMENT AND BRIEF FOR THE APPELLEES,

PREPARED BY

ED. GRAHAM HAYWOOD.

IN THE

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WM. J. HAWKINS and WALTER CLARK, Assignees in Bankruptcy of the estate and effects of THOS. P. DEVEREUX, a Bankrupt, and WALTER CLARK and JNO. DEVEREUX, Trustees, substituted for THOS. P. DEVEREUX, *Appellants*,

Against

GRINFILL BLAKE and E. J. D. BLAKE, his wife, and JNO. TOWNSEND and GEORGIANA P. TOWNSNED, his wife, *Appellees*.

ARGUMENT AND BRIEF FOR APPELLEES.

The cause in hand was before this court for hearing at October Term, 1878, upon the appeal of Blake and wife and Townsend and wife, from the decision of the Circuit Court, they being the plaintiffs in that court; and the decision of this court, and the opinion therein given, are found in 98 U. S. R., pages 315 to 332 inclusive. It now comes before this court again upon the appeal of Hawkins and Clark, assignees in bankruptcy of T. P. Devereux, and Clark and Jno. Devereux, substituted trustees for said Thos. P. Devereux of the Pollock lands, defendants in the Circuit Court, from a decree of the Circuit Court of the United States for the Eastern District of North Carolina, sitting in equity, made herein at November Term, A. D. 1879, of said Circuit Court.

The printed record now before the court, from page 1 to the middle of page 195, all which immediately precedes the words "Proceedings of June Term, 1879," is identical with

the printed record which was before this court at October Term, 1878; so that, while the record appears to be a voluminous one, it cannot be necessary for the second time to give a very elaborate statement of the facts of the case, and the *history* of the cause; and the alleged errors committed by the court below, which are now here for examination, are to be sought for only in so much of the printed record as is contained between the middle of pages 195 and 211.

A BRIEF STATEMENT OF THE FACTS.

Before the 3d of July, 1839, George Pollock died intestate and unmarried and without issue, being seized and possessed of a large estate, consisting of lands, slaves and personal effects. Frances Devereux, wife of Jno. Devereux, being a sister of said George Pollock and *one* of his heirs-at-law, inherited from him a large real estate, consisting of numerous tracts of land, situate in various different counties of North Carolina; and being one of his next of kin, her husband, John, in her right, thereby became the owner of numerous slaves and other personal property, which had belonged to Geo. Pollock.

On the 3d of July, 1839, Jno. Devereux, by deed of that date, conveyed to Thos. P. Devereux, the oldest son of said John and Frances, all the personal property so derived from Geo. Pollock, upon certain trusts, and subject to certain charges therein specified (*vide* Exhibit Z, with answer of T. P. D., record, page 71); and, on the same day and date, the said John and Frances, by deed of bargain and sale of that date, conveyed to said Thomas P. Devereux and his heirs the whole of the real estate which said Frances had inherited from her brother, George Pollock, upon certain trusts, and subject to certain charges therein specified (*vide* Exhibit A, with amended bill, record, page 43). Each of said deeds refers to the other, and together they constitute a family settlement of the real and personal estate derived from Pollock.

The last mentioned deed, conveying the Pollock lands, among other charges and trusts, imposes on said Thos. P. Devereux "*First*"—the duty of paying annually to Frances Devereux, from year to year, for her separate use, on the 1st day in March in each year, the sum of $3,000; "*Third*"—the duty of paying to the said Frances, or of investing for her, to her separate use, $50,000, and gives her power to appoint and dispose of the same by deed *or will*, as if she were unmarried; and both the annuity of $3,000 per annum and the sum of $50,000 were by said deed made *charges* upon the Pollock lands, conveyed to Thos. P. Devereux by the said deed.

In 1844 John Devereux died, and in 1849 Frances Devereux died, having first made her will, bearing date 23d December, 1847, which will was admitted to probate in (Wake) the proper county and court in August, 1852, and a copy of which is set out in the record (Exhibit B, with amended bill, record, pages 48 to 53), of which will she appointed Thos. P. Devereux one of the executors. The will contains no *residuary devise or bequest.*

The heirs-at-law and next of kin of Frances Devereux, at the date of her decease, were Thomas Devereux, her eldest son, her daughter Frances Ann, who had intermarried with Leonidas Polk, Bishop of Louisiana, and her grandchildren, the *feme* appellees, Elizabeth J. Blake and Georgiana T. Townsend, being the only children of her deceased son, George T. Devereux.

At the date of her death, her personal property, as distinguished from the funds over which she had power of appointment, consisted of "her household furniture, her carriage and horses, a growing crop upon a farm she was cultivating jointly with her grandson, John Devereux, a small sum of cash in hand, some petty debts due to her, and about sixty slaves. * * * In addition to this, she owned a house and lot in Chapel Hill. * * * ." Opinion in Blake v. Hawkins, 98 U. S. R., 325.

"Her will *commenced* with a declaration of her intention "'thereby to execute all powers vested in her, * * * par-

"ticularly those powers created in her favor by two certain "deeds, settling and assuring the estate of her late brother, "George Pollock, to her son, Thos, P. Devereux, dated some- "time in the month of July, in the year of our Lord 1839, and "executed by her late husband and herself.' This was followed "by her testamentary depositions. By the first five she gave "five legacies of $4,000 each, to five several charitable institu- "tions, to each an equal sum. By the sixth item she bequeathed "$500 to her executors for a charitable purpose. By the eighth, "she bequeathed $7,500 to her son, Thomas P. Devereux, (IN "TRUST) to apply the same annually to the payment of certain "annuities and charities therein specified; and by the twelfth "item she bequeathed $500 for another specified charity. The "will contains no other gifts of pecuniary legacies. The aggre- "gate of these is $28,500. Special dispositions are made of "her slaves, horses, cattle, hogs, crops, and farming utensils, "and of the proceeds of the sale of the house and lot in Chapel "Hill—generally, indeed, of all that she possessed in her own "right." Opinion in Blake v. Hawkins, 98 U. S. R., page 325. * * *

"Her horses, cattle, hogs, &c., crops and farming utensils, "her carriage, wagon, and all personal property except negroes "in the possession of her grandson, Jno. Devereux, she directed "to be sold and the proceeds applied to the payment of her "debts; and she appears to have doubted whether they would "be sufficient. Her house and lot in Chapel Hill she ordered "to be sold, and directed the sum paid for it to be invested in "some productive stock—ordering, however, a payment out of "it, and out of the funds arising from the sale of some negroes, "to satisfy an annuity of $150 during a life or lives. By these "specific appropriations she negatived any right to apply these "funds to the payment of the pecuniary legacies mentioned in "the first, second, third, fourth, fifth, sixth, eighth and twelfth "items of the will. Nothing of her own personal property of "any considerable value remained, *except her slaves.* Six of "them she specifically bequeathed, one she ordered to be sold,

"devoting the proceeds to the distribution of tracts and relig-
"ious books, and three others were directed to be sold at private
"sale, and a portion of the avails, if not all, she appropriated
"to the payment of an annuity. *The remainder of her slaves*
"*she provided might be taken at a valuation by her son-in-law*
"*and grandson, upon their giving bonds for the payment of the*
"*appraised value in ten annual installments. These bonds, of*
"*course, could not be applied to the discharge of the pecuniary*
"*legacies as they fell due.*" Opinion in Blake v. Hawkins, 98 U. S. R., page 327.

But if not taken by her son-in-law and grandson, they were to be disposed of on a credit of ten annual installments, and in neither event did she make any disposition of the bonds, or their proceeds, which were to be taken by her executors in exchange for said slaves. (*Vide* Exhibit B, with amended bill, item 7, record, page 50). Except that she charges upon the proceeds of the house and lot in Chapel Hill, and of said negro slaves, an annuity of $150 per annum for Louisa Taylor, after the death of her mother, in addition to an annuity of $50 per annum already given her, and charged upon the $7,500 given to Thos. P. Devereux *in trust*, by item 8th. (*Vide* Exhibit B, with amended bill, item 10, record, page 51; item 8, record, page 50.)

Thomas P. Devereux and others, who were by said will appointed executors thereof, did not qualify as such; but one Seymour W. Whiting was, during the litigation to establish the same—from Mrs. Frances Devereux's death, in June, 1849, until the same was admitted to probate in August, 1852—appointed administrator *pendente lite*, and on the 15th of November, 1852, he was also appointed administrator *cum testamento annexo*, and afterwards died.

HISTORY OF THE CAUSE.

On March 26, 1859, the appellee, Elizabeth, (then the wife of one Umstead, but who has, upon his death during the progress of this cause, intermarried with Grinfill Blake) and

the appellee Georgiana (then unmarried, but who has, pending this suit, intermarried with John Townsend) as complainants, filed their original bill in equity against Thos. P. Devereux, and Leonidas Polk and Frances Ann, his wife, in the Circuit Court of the United States for the District of North Carolina. (Record, pages 1 to 12 inclusive). And afterwards, at June Term, 1859, of said court, filed their amended bill in equity against the same parties. (Record, pages 34 to 43 inclusive), setting forth in each of said *original bills* the foregoing facts; and further alleging that said Thomas' pretended resignation of his executorship, and the appointment of said Whiting as administrator *cum testamento annexo*, were, as to said complainants, void and of no effect; that said Thomas was accountable to them in equity as executor for their share of the assets of said Frances remaining after the payment of her debts, funeral and testamentary expenses, and the legacies, which, it was further alleged, did not exhaust the assets, but left a large amount in his hands for distribution, to one-third of which they were entitled, as two of the next of kin of said Frances, deceased, representing their deceased father, George P. Devereux.

The bills alleged that said Thomas, both before and after his renunciation, intermeddled with the assets and had, in fact, the exclusive control and administration thereof; that he took possession of them immediately upon the death of his mother, the said Frances, disposed of them from time to time, and, after paying her debts, converted the residue to his own use; and that especially about the 7th of October, 1852, before the appointment of Whiting as administrator *cum testamento annexo*, he, the said Thomas P., took into his possession fifty-seven (57) slaves, appropriated them to his own use, caused them to be appraised and divided between himself and his sister, Frances Ann Polk, and conveyed to trustees, or a trustee, for said Frances Ann, the slaves which he allotted to her, and had then in his possession the original papers containing the details of said appraisement, division and transfer. That

the estate of said Frances was, in fact, fully administered by said Thomas, before said Whiting became administrator *cum test. an.;* that said Thomas purchased up the pecuniary legacies for about half their amount and claimed for himself the profit derived therefrom, took possession of all the other assets and converted them to his use; that Whiting, if he acted at all in administering said assets, did so entirely under the direction of said Thomas, and as his agent; that said Thomas' pretended renunciation and the appointment of said Whiting were a mere contrivance on the part of said Thomas to avoid being called to account; that Whiting had returned no inventory nor account of his administration, and was dead. And the bill prayed for a discovery and an account by the said Thomas, (1) as well of the $3,000 annuity, (2) and the $50,000 charged on the Pollock lands, (3) as of the general assets of Frances Devereux, deceased, which had come to his hands. (Amended bill, record, pages 34 to 43; Blake v. Devereux, 98 U. S. R., pages 318, 319).

Leonidas Polk and wife entered an appearance, but neither demurred nor answered (98 U. S. R., 319; record, page 32); and Thos. P. Devereux, after demurring (record, page 32), filed first his *answer*, supported by numerous exhibits (record, pages 58 to 105), and *then his amended answer*, accompanied by additional exhibits (record, pages 106 to 109), "admitting the main facts set out in the bill, but denying all fraud." Blake v. Hawkins, 98 U. S. R., page 319.

Thomas P. Devereux, in his said answer, refused to account (1) for the $3,000 annuity, because he claimed it was, by the deeds of July 3d, 1839, intended *only to be the interest on the charge of* $50,000, to diminish as said fund of $50,000 was from time to time appointed; and if this was not clearly expressed in the deeds, it was a *mistake*, which Frances Devereux had corrected in 1845 by the execution of a proper deed of explanation, exhibited with his answer as Exhibit X (record, page 76), and being the interest thereon, it was only an incident to the $50,000, and fell with it (record, page 63);

(2) he further refused to account for the $50,000 fund, or so much thereof as remained unappointed at Frances Devereux's death, because he insisted *she had not by her will executed her power to appoint said* $50,000 *charge*, or so much thereof as she had not then already appointed, and that upon the death of said Frances all power over the same ceased; and that the whole residue of said sum, as it stood at the death of said Frances, had lapsed and become extinguished for his benefit. (3) And he refused to account generally for the personal assets of said Frances, because he denied that he ever became her executor or had intermeddled with her assets, except in the manner admitted in his answer. And in this connection he gives an account of the proceedings relative to his purchases of the pecuniary legacies from the several charitable institutions, and to the dealings and accounts between himself and Whiting while Whiting was acting as administrator *pendente lite*, and also after he became administrator *c. t. a.* (record, pages 64 to 68). And he files Exhibits V, U, T, S, R, N, Q, P, O (record, pages 94 to 102), showing his purchase of and other dealings with legacies given in Frances Devereux's will, and also his conveyance of part of her negro slaves to one Duncan as trustee for Frances A. Polk, all executed before Whiting was appointed administrator *cum testamento annexo*. And he states, in effect, in his said answer, that neither the $3,000 annuity nor the $50,000 fund forming part of said Frances' estate—having purchased the legacies, he converted the whole of the personal estate of the said Frances, including her negro slaves, which remained after the payment of her debts and funeral expenses, to his own use, to pay him the pecuniary legacies which had thus become his own property; and he insists that said assets were not more than sufficient for that purpose; and he further accounts for the transferring of about half of the negro slaves to Duncan as trustee for Frances A. Polk, by alleging that when the $50,000 was secured to Frances Devereux's separate use by the deed of July 3, 1839, it was understood between herself

and her husband, John, that he was to make no provision for her in his will, and that John having failed to make such provision for her in his will, she had, notwithstanding said engagement, dissented from the said will and thereby obtained, under the laws of North Carolina, a large portion of the personal property of said John, including his negro slaves; and that by her dissent from her said husband's will she had disappointed provisions which were therein made for Frances A. Polk, and that his (the said Thomas') object in purchasing in the pecuniary legacies, taking the whole of said Frances' assets, including her negro slaves, to pay the same, and conveying a large portion of said negro slaves to Duncan, as trustee for Frances A. Polk, had been to set right what his mother had disordered by her dissent from his father's will, and to prevent any loss falling upon said Frances Ann Polk by reason of said dissent. (*Vide* answer of T. P. Devereux, record, pages 60 to 71 inclusive).

The complainants excepted to the sufficiency of the answer as at first filed, because it failed to set out clearly whether the said Thomas had not divided fifty-seven slaves of the testatrix between himself and Frances A. Polk, on the 7th of October, 1852, before Whiting was appointed administrator *cum testamento annexo*, and also because it failed to exhibit a paper-writing evidencing said division; because, moreover, it failed to set out the disposition made of the $50,000 fund, and of the $3,000 annuity. And the said Thomas thereupon further answered, still refusing to account for the $50,000 charge and the $3,000 annuity, but he exhibited the paper-writing evidencing the division of the fifty-seven slaves between himself and Frances A. Polk. (*Vide* amendment to answer of T. P. Devereux, record, pages 106 to 109).

The plaintiffs filed their replication at November Term, 1859, of the Circuit Court, and then withdrew it at the request of said Thomas in order that he might file further amendments to his answer, and then refiled their replication finally at June Term, 1860. (Record, pages 109 to 112).

At which term, no depositions having been taken, the cause was set down for hearing upon the pleadings, exhibits and proofs. (Record, page 112). And at last an order of reference to take an account was made at June Term, 1869. (Record, pages 123, 124).

After the account was taken, and exceptions thereto filed, the cause was *heard finally* at June Term, 1874, of the Circuit Court. (Record, page 191).

At the hearing at June Term, 1874, the Circuit Court *held:*

(1). That Frances Devereux did not by her last will and testament appoint the fund of $50,000 to be part of her personal estate in the hands of her executors.

(2). That the *deed of explanation* executed by said Frances in 1845, was *effectual*, and that it operated to make the *annuity* of $3,000, charged upon the Pollock land, the *interest on the* $50,000 *charge*, reducing it, as the charge of $50,000 was from time to time appointed by the said Frances, so as to make said annuity in each year equal to six per cent. interest on so much of said $50,000 fund as remained unappointed.

(3). That the plaintiffs were not entitled to any account of the $50,000 fund, except so far as was necessary to ascertain the amount of the annuity, but that they were entitled to an account of so much of said annuity as remained unexpended in the hands of T. P. Devereux at the date of the death of said Frances, and also to an account of so much of the general personal estate of said Frances, including the negro slaves, as came into the hands of the said Thomas P.; but that they were not entitled to any account of so much of said personal estate as did not come into the hands of said Thomas P., and which had been administered by Whiting.

(4). That in taking the account prayed for by plaintiffs, the said Thomas was to be credited, not with the full amount of the pecuniary legacies, but with what he had paid for the same.

(5). In taking the account before the master, his assignees in bankruptcy, representing said Thomas, had offered in evi-

dence a paper-writing, dated October 20th, 1864, signed by Thomas Devereux, which accompanied the master's report as an exhibit—the Circuit Court further decided that, in taking the account, the said paper-writing was to be held *conclusive* of all matter of account between Frances and Thomas P. Devereux up to its date.

(6). Another paper-writing, made sometime late in the year 1847, and signed by W. D. Cooke, had also been offered in evidence in taking the account before the master, and accompanied it as an exhibit. The court further *held* that *this* paper-writing was to be deemed conclusive of all matters of account between the said Frances and Thomas P. Devereux previous to and including June 21st, 1847.

To each of these rulings of the Circuit Court the plaintiffs, Elizabeth and Georgiana, excepted, and assigned each one of them for error, in the record which was before this court at October Term, 1878. Blake v. Hawkins, 98 U. S. R, 323, 324. And *this* court then *held* that the Circuit Court had committed but a single error *in laying down the principles upon which the account was to be stated between his assignees in bankruptcy representing Thomas P. Devereux, and the original complainants, Elizabeth J., and Georgiana P.*—and this single error was in holding *that the testatrix, Frances Devereux, did not appoint to her executors so much as remained of the* $50,000 *fund over which she had the power of appointment,* "except so far as it was necessary to resort to the same to pay off the pecuniary legacies bequeathed by her in her said will, after exhausting for that purpose what remains of her general personal assets, after payment of her debts and funeral expenses and the costs of administering her estate." Blake v. Hawkins, 98 U. S. R., 329.

That the paper signed by W. D. Cooke, dated in 1847, *was conclusive;* that the paper of October, 1846, signed by Frances Devereux *was also conclusive;* that the instrument styled "the deed of explanation," executed by Mrs. Devereux in 1845, was *effectual* and *operated as the Circuit Court had*

interpreted it; and that the said Thomas P. Devereux *was rightly held chargeable only with such assets of the said Frances, including her negro slaves, as came to his hand and under his control.* But the Supreme Court of the U. S. held that "Mrs. Devereux's will was an execution of the power, and an appointment of the fund of $50,000 to her executors. It converted the fund into her own estate, at least to the extent of $28,500, if there was so much of it remaining. Blake v. Hawkins, 98 U. S. R., page 328; and this court further suggested that the residue of the fund did not exceed $28,500.

As this suit was originally constituted, it was an ordinary bill for an account, brought by two of the next of kin of Frances Devereux, against Thos. P. Devereux as her executor, they claiming, that by intermeddling with the assets, the said Thomas had, notwithstanding his formal renunciation of his office of executor, made himself liable to account with plaintiffs, as executor, for such assets as had come to his hands, and especially for the fifty-seven slaves which *he had become possessed of before Whiting was made adm'r c. t. a.*, had divided with Frances and Polk, and had *given* her half. For, according to said Thomas P.'s own statement, "the *arrangement* amounted to a *gift from this defendant to her*, and she and her husband could not object to anything this defendant might wish to do." (*Vide* amendments to answer of T. P. Devereux, record, page 107).

When, however, the said Thomas *became bankrupt, his assignees in bankruptcy* were made parties defendant (record, page 119), and when he *died* not only was R. C. Badger appointed *administrator d. b. n., c. t. a.*, of Frances Devereux and made party defendant (record, pages 120 to 122), but in addition to his assignees in bankruptcy, Walter Clark and Jno. Devereux, "*claiming to be substituted trustees, jointly, "for Thos. P. Devereux, since his decease, in the deed of July "3d*, 1839, conveying the lands which had descended to Mrs. "Frances Devereux from her brother, Geo. Pollock," were also made parties defendant (record, page 190), the object of the

complainants being to keep a personal representative of Frances Devereux before the court, and also the persons in whom were both the *beneficial and the legal estate* in the Pollock lands.

To understand all this, it is necessary to call attention to the *seventh* clause in the deed of July 3d, 1839, conveying the Pollock lands to T. P. Devereux, wherein it is provided, "*that the said Thomas, his heirs and assigns shall hold all the "lands and real estate herein before described and granted upon, "and to, the uses, trusts and purposes following—that is to say, "upon trust for his own use and benefit during his natural life, "and no longer, and from and after his death, upon trust for the "payment and satisfaction, and to stand charged with the pay-"ment and satisfaction of all and every the just debts which the "said Thomas may owe at the time of his death, and subject "thereto, upon trust for any one or more of the children, born or "unborn, of the said Thomas, &c., &c.*" (Record, page 46). Accordingly, when said Thomas died, the said Walter Clark and John Devereux having been appointed substituted trustees to subserve the trusts specified in said deed, were made parties defendant (record, page 190), because the plaintiffs in the original bill had always claimed *that so much of the* $50,000 *fund as said Frances had not appointed during her life, had been appointed by her will to be part of her general personal estate in the hands of her executors*, which fund, being *a charge upon the said Pollock lands*, conveyed in the said deed of July 3d, 1849, it was necessary to have before the court the assignees in bankruptcy of said Thomas, representing such *beneficial* interest as he had had in said lands, and the *substituted trustees* aforesaid in said deed, representing and holding the *legal estate* in said lands. For if ever the plaintiffs Elizabeth and Georgiana succeeded in obtaining a decision, that the undisposed of part of the $50,000 charge was *appointed* by Frances Devereux's will, it was necessary to have before the court the persons in whom was the legal title to said Pollock lands, *in order that the residue of said charge might be raised out of the same.*

When this cause was before this court at October Term, 1878, the original plaintiffs succeeded, *for the first time*, in obtaining a decision, *which*, reversing the decision of the Circuit Court, *declared*, "*that Mrs. Devereux's will was an execution of the power, and an appointment of the fund to her executors. It converted the fund into her own estate, at least to the extent of* $28,500, *if there was so much of it remaining.*" Opinion in Blake v. Hawkins, 98 U. S. R., page 328.

The Circuit Court had held, that this fund *had not been appointed to Mrs. Devereux's executors*, and for that error this court held, "THAT THE DECREE OF THE CIRCUIT COURT MUST BE REVERSED, and the case sent back with instructions to direct A NEW ACCOUNTING, and to enter a decree in conformity with this opinion." Blake v. Devereux, 98 U. S. R., page 531. (*Vide* mandate from Supreme Court of U. S., record, pages 196, 199).

PROCEEDINGS AFTER THE MANDATE WAS SENT DOWN IN THE CIRCUIT COURT AT JUNE TERM, 1869.

When the mandate was sent down and filed *this* was the condition of the cause. By the former account it had been ascertained that the assets of Frances Devereux, including her negro slaves, which had come into the hands of Thomas P. Devereux, amounted, in May, 1868, when he became bankrupt, to $50,057.36. (*Vide* Account D, record, pages 141 to 143). * * * That he had expended in payment of debts and funeral and testamentary expenses, &c., &c., $8,424.36. (*Vide* Account F, record, pages 143 to 145). Leaving him chargeable with an undisposed of residue of $41,633. (*Vide* Account G, record, page 145). *And that all parties agreed that these accounts were correct and free from errors.* (*Vide* decree at June Term, 1874, record, page 193, FIRST EIGHT LINES AT THE TOP OF SAID PAGE).

So that it was apparent the original plaintiffs, Elizabeth and Georgiana, were entitled to recover from *Frances Devereux's estate*, then represented by R. C. Badger, administrator,

one-third of said sum of $41,633=$13,877.66⅔, with interest thereon from the 31st of May, 1868.

The parties then, at June Term, 1879, of the Circuit Court, without a new accounting, ascertained *by agreement*, "that the "balance charged on the land of Thomas P. Devereux, and "which Mrs. F. Devereux had not disposed of during her "life, and which by her will she appointed to her executors, "was, on the 3d of June, 1849, the date of her death, the "sum of $21,527.67." (*Vide* stipulation signed by counsel of the parties and filed at June Term, 1879, record, page 202).

As this fund *did not exceed* $28,500, the whole of it was appointed to her executors, and became part of said Frances' estate, according to the opinion of the Supreme Court of the United States, at October Term, 1878. (Opinion in Blake v. Hawkins, 98 U. S. R., page 328). It had never been raised out of the Pollock lands conveyed to T. P. Devereux by the deed of July 3d, 1839, and *consequently* said lands, in whosoever hands they now were, owed the estate of Frances Devereux the sum of $21,526, with interest thereon from June, 1849, when Frances Devereux had died, which *interest* in November, 1879, equalled $39,396.54, making the amount then due by the Pollock lands to Frances Devereux's estate, principal and interest, equal to $60,523.21.

Then, for the first time in the history of this cause, it became necessary to determine *what disposition was to be made of this fund by the court.*

All the parties interested also at the same time agreed that "*the account heretofore taken of the general personal assets of* "*Frances Devereux* herein allowed and filed at June Term, "1874, *is correct*—except that the *defendants insist* on the "allowance of their exception to said account (No. 14), to this "extent—*that said T. P. Devereux is chargeable only with one-* "*half of the value of said negroes, being* $9,995.50, *with interest* "*thereon,* which *is* $9,823.57, *instead of with the full amount* "*of said items;* and the *defendants agree that said accounts*

"*when so reformed, will be correct. And they submit it to the* "*court to say whether said account shall not be so reformed.* "*While the plaintiffs insist, that the defendants are barred by* "*the decree of June Term*, 1874, and their consent set out "therein, from questioning *any part of Account D; and even* "*if it were open to attack by them, that it is correct in the* "*particular* whereof the defendants complain; and *they sub-* "*mit it to the court to decide whether said account shall be* "*reformed in any respect.*" (Record, page 203).

And when the cause came on to be heard, the Circuit Court sustained *the position of the plaintiffs*, as to this *charge*, against Thomas P. Devereux as executor of Frances Devereux.

The circumstances of the case, therefore, were these: Thos. P. Devereux, believing that Frances Devereux's will had *not appointed* this fund, charged upon the Pollock lands in his hands, had, according to his own statement in his answer, and in the various amendments thereto, *first*, purchased the various legacies which the fund was appointed by said Frances to her executors to pay, and his payments on this account, according to the accounts already taken in the cause, had amounted, principal and interest, in May, 1868, when he became bankrupt, to $39,466.58. (*Vide* Account C, record, page 146). And all the parties had *agreed* that this account was correct and free from errors. (*Vide* decree at June Term, 1874, record, page 193, lines 11, 12, 13). He had *then* assumed the possession of, and converted to his own use, all of said Frances' assets, including her negro slaves, claiming, that by the purchase of the beforementioned legacies he became entitled to take the assets, with which, *according to his interpretation of the will*, the said legacies were to be paid; and, desiring to rectify certain injustice which, *in his opinion*, had been done to Frances Ann Polk by Frances Devereux's dissent from her husband's will, whereby provisions made in said will for said Frances Ann had been disappointed, in order that Frances Devereux might get that portion of her husband's estate which came to her *by law* on her *dissent*

aforesaid, he had *finally* conveyed to one Duncan, as trustee for Frances Ann Polk, about one-half of fifty-seven negro slaves, and kept the rest himself, which constitute the major part of the personal assets of Frances Devereux, and of course he was chargeable with the whole and not with only the half of said slaves.

If the will of Frances Devereux *had been properly interpreted*, the pecuniary legacies purchasd by T. P. Devereux would have been paid, and ought to have been paid, by applying to their satisfaction, as far as it would have extended, the $21,527.67 charged upon the Pollock lands conveyed to said Thomas P., and which Frances Devereux *had not appointed during her life-time*, but by her will (as the Supreme Court of the United States held at October Term, 1878,) had appointed *to her executors for the purpose of paying these pecuniary legacies*, which legacies she had expressly provided in her will, should not exceed that sum of $21,529.67, by reducing certain of the legacies, so as to bring them within the limits of so much of the $50,000 charge as she had not appointed during her life. (*Vide* Exhibit B, with amended bill, item 16, record, page 52; opinion in Blake v. Hawkins, 98 U. S. R., page 328). But Thos. P. Devereux, *assuming to construe the will for himself*, had misinterpreted it, and had, *first*, purchased up most of the legacies, and then he paid himself with the *general personal assets* of Frances Devereux, including her slaves, to which latter fund the *feme* plaintiffs in the Circuit Court—the *feme* appellees in this court—were entitled, to the extent of one-third. The $13,877.66⅔, with interest thereon from May 31st, 1868, which the said plaintiffs, Elizabeth and Georgiana, were *entitled to receive out of the general assets*, having thus been converted by T. P. Devereux to his own use, upon claim that he was entitled to the same because he had purchased the pecuniary legacies, and the said $13,877.66⅔ must be used to pay them, *in equity* the fund *which ought to have been* applied to satisfy the pecuniary legacies accord-

ing to the *proper interpretation* of the will of the said Frances, must now be used to *replace* the fund which was actually misappropriated by the owner of the legacies, and applied to their satisfaction, and the *feme* appellees must *be subrogated* to the right which the pecuniary legatees originally had in the residue of the $50,000, which was charged on the Pollock lands in the hands of T. P. Devereux.

THE CONDITION OF FRANCES DEVEREUX'S ESTATE AT NOVEMBER TERM, 1879, WHEN THE DECREE APPEALED FROM WAS ENTERED.

There are some facts in this case which are not disputed:

(1). That on the 31st of May, 1868, when Thomas P. Devereux became bankrupt, the *feme* plaintiffs, Elizabeth J. and Georgiana P., were entitled to receive from Frances Devereux's estate the sum of $13,877.66⅔, with interest thereon from that date, and no part of that sum had then or has since been paid to them.

(2). That at the date of said Frances' decease, on 3d of June, 1849, she had the right to appoint $21,527.67, charged on the Pollock lands, conveyed by her to Thomas P. Devereux by deed of July 3d, 1839, and by her will she did appoint that sum to her executors to be part of her personal estate for the payment of the legacies specified in items 1, 2, 3, 4, 5, 6, 8 and 12 of her will.

(3.) That this sum of $21,527.67 so appointed, has not been raised out of said Pollock lands, but the lands still burdened with that charge and the interest thereon, passed either to the appellants Hawkins and Clark as the assignees in bankruptcy of T. P. Devereux, by his assignment, when he was adjudicated a bankrupt, or to the appellants, Clark and John Devereux, as substituted trustees for T. P. Devereux, in the deed of July 3d, 1839, conveying the Pollock lands to T. P. Devereux, when, after his death, those substituted trustees were appointed.

(4). That these assignees in bankruptcy of T. P. Devereux, and the trustees substituted for him in the aforesaid deed of July 3d, 1839, have, during the progress of this cause, been regularly made parties defendant in this cause, and submitted their rights in the premises to the adjudication of the Circuit Court.

(5). That Thomas P. Devereux, on 31st of May, 1868, when he was adjudicated a bankrupt, had received of the assets of Frances Devereux $41,633, which he had converted to his own use. It is true there is a faint protest by the appellants against part of this alleged conversion, in that it is insisted T. P. Devereux *did not convert to his own use* that part of said Frances' slaves which he conveyed to Duncan as trustee for Frances Ann Polk. But it is difficult to conceive how he can have *claimed and exercised* the right to *convey* the negroes to his sister's trustee, without first making them his own. Both he and she, *as T. P. Devereux alleges* in his amendments to his answer (record, page 107), regarded the arrangement between them as *"amounting to a gift from him to her, and that she and her husband could not object to anything he might wish to do"* in the premises, and the whole of T. P. Devereux's answer consists of an attempt to justify the conversion of all the slaves to his own use, and the conveying of a part of them to his sister, on the ground that the pecuniary legacy of $7,500 given in item 8 of the will (record, page 21) was given to *him;* that he had purchased for himself the other legacies given by the will, and there was no fund for their payment but the general residue of said Frances' assets, embracing *all the slaves, which went to make up the sum of* $41,633 *of general assets.* (*Vide T. P. Devereux's answer, record, pages* 58 to 71).

But it is a sufficient answer to any objection to fixing T. P. Devereux with the conversion of *all* said slaves, that at June Term, 1874, *after* the Circuit Court had declared the principles upon which the account prayed for by the original bill was to be stated, the account which fixes T. P. Devereux with

the conversion of the whole sum of $41.633 of assets was not *actually retaken, but was agreed to by the appellants as correct, and this agreement entered in the decree,* wherein it is stated: "*It was in like manner admitted and conceded by all the par-* "*ties to this cause, plaintiff and defendant, that it sufficiently* "*appears, by such portions of Mr. Commissioner Page's ac-* "*counts filed at this term as are not excepted to either by the* "*plaintiffs or defendants, that on the 31st day of May, 1868,* "*the date of Thos. P. Devereux's bankruptcy, the said Thomas* "*P. had in his hands, of the general personal assets of Mrs.* "*Frances Devereux, after payment of $8,424.36 of debts,* "*funeral expenses, and costs of administration, the sum of* "*$41,633, which includes interest to that date.*" (Record, page 193). After this solemn admission of record of the appellants, the court will hardly patiently consider a position taken by them which amounts to its denial now. And we may safely take it, as one of the indisputable facts of the case, *that Thos. P. Devereux, on the 31st of May, 1868, when he was adjudicated a bankrupt, had use of the assets of Frances Devereux, $41,633, which he had converted to his own use, and that among these assets were* ALL *the 57 slaves spoken of in the pleadings as having been of the estate of said Frances,* and they embraced the $13,877.66⅔, which ought to have gone to the *feme* appellees, Elizabeth and Georgiana.

(6). That Frances Devereux, by item 8th of her will, gave $7,500 of this $21,527.67 to Thomas P. Devereux "*in trust,*" for the following purpose: 1st. To pay Louisa Taylor an annuity of $50 per year, during her natural life (record, page 50), and that Louisa Taylor is still living, but has received no part of her annuity since January 1867 (*vide stipulation between the parties,* record, page 202). And as a matter of fact that T. P. Devereux did never raise and appropriate the said sum of $7,500 or any part thereof, out of the $21,527.67 charged in the Pollock lands in his hands, nor has the said sum of $7,500, or any part thereof, ever been so raised and appropriated by any one else.

(7). That said sum of $7,500 of this $21,527.67 was, by said item 8th of said Frances' will, further given to said T. P. Devereux "*in trust*," to pay certain other annuities (record, page 50), amounting, together with the $50 annuity aforesaid, to the whole of the interest at *six per cent. per annum* on the sum of $7,500, but that the rest of these annuities, except the $50 annuity to Louisa Taylor, have wholly failed by lapse, abandonment or otherwise. (*Vide stipulation between the parties*, record, page 202. Also, decree at November Term, 1879, section 8, record, page 206). So that the trust declared on this fund of $7,500, except as to the $50 annuity to Louisa Taylor, no longer remains to be satisfied.

(8). That by item 10th of said Frances' will it is provided: "From the funds arising from the sale of the above slaves "(being the fifty-seven slaves hereinbefore mentioned), and "the house and lot in Chapel Hill, it is my will that at the "death of Mrs. Eliza Taylor, her daughter, Louisa, shall "receive the further sum of $150 annually, during her natu- "ral life, * * * over and above the sum of $50 per "annum heretofore provided for her, the same to be paid the "said Louisa Taylor by my executors annually." (Record, page 10). That Mrs. Eliza Taylor is dead. That Louisa Taylor was paid this annuity annually by T. P. Devereux up to 1st of January, 1867, after Mrs. Eliza Taylor's death, but no payment has been made to her since the date last aforesaid. (Record, page 200).

(9). That the *whole of Frances Devereux's estate* at the date of her decease, after payment of *specific and demonstrative legacies*, and the settlement of her debts and funeral and testamentary expenses, consisted of the $41,633 of general assets, so converted by Thomas P. Devereux as aforesaid; and the fund of $21,527.67, with interest thereon from the 3d of June, 1849, which she had the power to appoint and did, by her will, appoint to her executors for the payment of her pecuniary legacies; which legacies, by special provision in said will, she reduced within the sum of $21,527.67, but without

reducing the legacy of $7,500 given to T. P. Devereux "*in trust*" as aforesaid. And by reason of the fact that the $21,527 which said Frances appointed, was charged upon *land in which Thos. P. Devereux had the beneficial interest*, and the additional fact that said sum of $21,527 was, in fact, *not raised and appropriated* by said Thomas to the uses and purposes of said Frances' will, out of said Pollock lands—or from any other source—he has had the entire benefit of the same; so that, in fact, he has received *all* the assets of Frances Devereux, viz.: the fund which, on 31st of May, 1868, was $41,633, and the $21,527.67, with interest thereon since the 3d of June, 1849, which interest on the 31st of May, 1868, was $24,541.34. So that T. P. Devereux, as the account now stands, has been benefited by amounts derived from Frances Devereux's estate which, on 31st of May, 1868, equalled $41,633+$21,527.57+$24,541.84=$87,702.21 and the accumulated interest thereon from 31st of May, 1868, until now.

(10). That while appellants Elizabeth and Georgiana, representing their father, George P. Devereux, have received no part of the undisposed of residue of the estate of said Frances and the said Thomas P. has received the large sum just mentioned, the said Thomas P. has, by the transfer of half of the negro slaves to Duncan, in trust for Frances Ann Polk, reduced the amount of his receipts for the said Frances Ann's benefit by an amount which was, in value, at least equal to the share of the undisposed of residue of said Frances Devereux's estate to which said Frances Ann was entitled; and, consequently, while said Frances Ann has been made a party to this suit from its inception, and entered an appearance therein at its earliest stages, she has not appealed from the decree made herein by the Circuit Court, nor ever at any time set up any further claim to any part of the assets of Frances Devereux, deceased.

The foregoing ten (10) propositions are all undoubted *facts*, apparent to the court here on the face of the record, and, in effect, found by the Circuit Court in its decree. We do not

think that any one of them will be seriously questioned by the appellants. We are sure the Supreme Court will find them all well established.

THE LEGAL AND EQUITABLE QUESTIONS WHICH ARISE IN THE PRESENT STATUS OF THE CASE.

So while this case was, in its origin, simply a suit by certain of the next of kin of Frances Devereux against T. P. Devereux, one of the executors named in her will, who had so far intermeddled with the assets of the said Frances as to make him liable, as executor, for the assets coming to his hands, to obtain such share of the undisposed of residue of said Frances' estate, as they, the next of kin, were entitled to receive, it has now almost completely changed its character by reason of the changes which have taken place *pendente lite* in the parties to the suit and in the circumstances of the original parties.

The question before the court now is one between R. C. Badger, the administrator *de bonis non cum testamento annexo of Frances Devereux, deceased, representing certain of the legatees and next of kin or distributees of said Frances,* on the one side, and W. J. Hawkins and Walter Clark, *assignees of T. P. Devereux, in bankruptcy, and the same Walter Clark and Jno. Devereux, substituted trustees under the deed of July 3d,* 1839, conveying the Pollock lands to said T. P. Devereux, *representing the general creditors of said T. P. Devereux,* on the other side, as to whether the said assignees in bankruptcy, and substituted trustees, are to retain the Pollock lands conveyed by said deed of July 3d, 1839, sell them, and apply their proceeds to the satisfaction of the claims of *Thos. P. Devereux's general creditors.* Or must they raise out of said lands: *First,* the sum of $21,527.67, with interest thereon from June 3d, 1849, when Frances Devereux died, or so much thereof as is needed, to go to the personal representative of Frances Devereux, to satisfy the claims of Louisa Taylor,

to whom two express legacies of annuities (one of $50—charged on said fund which, in its turn, was *charged* upon the Pollock land—and another of $150, *charged* upon the proceeds of her house and lot in Chapel Hill and the fifty-seven slaves hereinbefore mentioned) were given by said Frances' will; and the further claims of the appellees Elizabeth Blake and Georgiana Townsend, two of the distributees, or next of kin of said Frances, entitled to one-third of the undisposed of residue of said Frances' personal estate.

All the legatees of said Frances have been satisfied or have abandoned their claims except Louisa Taylor. All the distributees, or next of kin of said Frances, except the said Elizabeth and Georgiana, have had from said Frances' estate as much as, or more than they were entitled to. There is a part of her estate, consisting of $21,527.67 and the accumulated interest thereon from June 3d, 1849, charged upon the Pollock lands, which has never been raised out of said lands, and which is a first charge on said lands, *paramount* to any claims which Thomas P. Devereux or his general creditors have on them. And we insist, with great confidence, that before the general creditors of said Thomas, represented by his assignees in bankruptcy, and the substituted trustees, can derive any benefit from the Pollock lands, there must, in equity, be raised and appropriated out of said lands enough of the $21,527.67 charge and the accumulated interest thereon to satisfy the demands of the unsatisfied legatees and next of kin or distributees of said Frances Devereux, and to be applied to that purpose by the personal representative of said Frances, under the direction of the court.

The personal representative of Frances Devereux was kept before the court, as a party defendant, after the death of T. P. Devereux, because, in such a suit as this, it was necessary for him to be a party in order that the *amount* of the *claims* which the said Louisa Taylor, Elizabeth Blake and Georgiana Townsend, respectively, *had against the assets of the said Frances* might be ascertained. And he has not appealed from

the decision made herein by the Circuit Court. And the assignees in bankruptcy and substituted trustees were also brought in and kept before the court, because in one or the other, or both of these pairs of officers, is vested the *legal estate* in the Pollock lands, and the *beneficial interest, if any, which Thomas P. Devereux had therein.* And upon these lands was charged the said sum of $21,527.67, with the accumulated interest since 1849, which constitutes part of the estate of Frances Devereux, deceased; and out of these Pollock lands the said fund has yet to be raised and appropriated to said Frances' estate.

The principle which governs the decree passed by the Circuit Court, at November Term, 1879, is that *first*, out of this fund of $21,527.67 must be raised and appropriated $7.500, to the legacy appointed out of it to Thomas P. Devereux by the 8th item of the will for the payment of certain annuities. Out of this $7,500 the annuity of $50 to Louisa Taylor must be *first* provided for. All the other annuities granted in said 8th *item* having lapsed, expired, or been abandoned by the several annuitants, there is a *resulting trust of the residue of said fund of* $7,500 after providing for the payment of the gross value of Louisa Taylor's annuity, for the benefit of the next of kin of said Frances. And in *one-third* of this resulting trust the appellees, Elizabeth and Georgiana, are beneficially interested.

It is to be observed, the sum of $7,500 is appointed to Thomas P. Devereux "*in trust*" for certain purposes specified in the 8th item of the bill, all of which "*purposes*," except the annuity of $50 *per annum* to Louisa Taylor, have in one way or another lapsed or become ineffectual. "There is no "equitable principle more firmly established than that where "a voluntary disposition of property by deed or will is made "to a person *as trustee*, and the trust is not declared at all, or "ineffectually declared, or does not extend to the whole interest "given to the trustee, or fails wholly or in part by lapse, or "otherwise, the interest so undisposed of will be held by the

"trustee, *not for his own benefit*, but as a *resulting trust* for "the donor himself, or for his heir-at law—or next of kin, "according to the nature of the estate." Hill on Trustees, page 114.

To the same effect is 2 Story's Equity Jurisprudence, section 1,196 *a;* Fitch v. Weber, 31 En. Ch. R. (6 Hare), 145; Monie v. the Bishop of Durham, 10 Ves., page 522; Mayor, &c., of Gloster v. Wood, 25 En. Ch. R. (3 Hare), 131; Robinson v. McDiarmid, 87 N. C. Rep., page 462.

In a late edition of his treatise on Powers (8th London Edition, page 476), Lord St. Leonard says: "Where there "is a power to appoint part of a settled fund, the execution "of the power *takes the part appointed entirely out of the set-* "*tlement.* Although, therefore, *the beneficial interest* in it is "not, in terms, immediately disposed of, yet *there can be no* "*resulting trust for the benefit of any person under the deed* "*creating the power;* for where the principal of the fund is "appointed *it must be considered as if it had never been com-* "*prised in the trust*, because it is absolutely taken out of it by "the execution of the power."

And this *dictum* of Lord St. Leonard's is cited with approval by the court in Brickenden v. Williams, L. R., 7 Equity Cases, page 315; and the case of Easum v. Appleford, 5 My. and Cr., page 56, which apparently conflicts, is explained and distinguished. See, also, *Wilkinson v. Schneider*, L. R., 9 Equity Cases, page 430.

The same rule applies where a fund, over which one has a power of appointment, is, by will, appointed "*to an executor*," who is but a trustee for the payment of debts and legacies and to distribute the surplus undisposed of among the next of kin or distributees of the testator. The question is one not of *intention* at all; the *expressed intention* is that the fund, or the part of it appointed, shall go to the executors for the payment of debts and legacies, and if it is not exhausted in their discharge, the question is one of *resulting trust.* There is an *absolute severance* of the fund. That is appointed to the

executors and taken away entirely from under the settlement so far as the appointer can do so. The executors cannot take beneficially; they are but trustees. There is no equity between the persons entitled under the settlement and the executors, and they cannot keep the fund for themselves.

The Vice-Chancellor, in Wilkinson v. Schneider, concludes by saying: "I think a resulting trust must be always a result-"ing trust for the creator of the settlement—the conveyor "and disponer of the property. The resulting trust here must "be for the persons who would be entitled if this were the "appointor's property." Wilkinson v. Schneider, L. R., 9 Equity Cases, page 430. In that case it was *held*, that a pecuniary legacy given out of a fund appointed to executors, which *lapsed* by the death of the legatee during the life-time of the testatrix, did not pass by the residuary clause of the will under 1 Vic., chapter 26, section 27; but "the share of the fund "which lapsed passed to the *next of kin* of the testatrix, and "not to the persons interested in default of appointment under "the settlement."

Under the old law, in England, the executor took *beneficially* the residue not expressly disposed of; under the provisions of Stat. 1, Will 4, chapter 40, in England—and probably *always* in North Carolina, certainly ever since the act of 1789, chapter 368, section 2 (Ralston v. Telfair, 2 Dev. Eq., 255)—the residue not expressly disposed of, is held by the executor as trustee for the next of kin; but in England, even *before* Stat. Will 4, chapter 40, where the residue was bequeathed to an executor *upon trusts* which did not exhaust the property, he was held to be a trustee of the unexhausted portion *for the next of kin*. (Dawson v. Clark, 15 Ves., 409; 18 Ves., 247; King v. Denison, 1 V. & B., 260). The only question here is, whether this doctrine is equally applicable, where the gifts which do not exhaust the fund are by way of appointment. We maintain that it does equally apply; and the result of any other ruling would be, that the power might be wholly or partially exercised, according to the state of the

testator's property at his death, which is contrary to the settled doctrine, that where an appointment is made by will, for purposes which do not exhaust the fund, the surplus is not unappointed, but falls into the residue of the testator's estate. In Wilday v. Barnett (L. R., 6 Eq. Cas., 196), Mr. Bathurst, in his argument, relied upon the proposition just stated as *settled law;* Lord Romilty, M. R., in delivering his opinion, said: "I assent to Mr. Bathurt's argument, that the will must, if it "operates as an execution of the power at all, operate as an "appointment of the whole fund" (page 197). The cases are numerous, and they amount to this: if the donee of a power to appoint a fund, either expressly or by implication, appoints it to his executors, thereupon the executors take it as a part of the *property* of the appointor, and as in that character they do not take it beneficially, they take it "*in trust*," that is, first to pay the creditors, and then the legatees, and if there are no legatees, or the legacies do not exhaust the fund, then in trust for the next of kin of the appointor. (Chamberlain v. Hutchison, 22 Beav., 444. Lefevre v. Freeland, 24 Beav., 403; Wilday v. Barnett, L. R., 6 Eq. Cas., 193; Brickenden v. Williams, L. R., 7 Eq. Cas., 310; Wilkinson v. Schneider, L. R., 9 Eq. Cas., 423; *In re.* Wilkinson, L. R., 4 Ch. Ap. Cas., 587; Attorney General v. Brackenbury, 32 L. J. (Ex.), 107; Lord St. Leonards on Powers, 8 London edition, 467).

The whole doctrine is, that where a testator says he gives "*in trust*," and stops there, or when he gives upon trusts which fail, or are ineffectually expressed, in all these cases the courts say, if upon the face of the will there is a plain declaration that the person to whom the property is given is to take it *in trust*, and though the trust is not declared, or is ineffectually declared, or becomes incapable of taking effect, the party shall be *a trustee*, if not for those who were to take under the will, then for those who take under the disposition of the law. Monie v. Bishop of Durham, 10 Ves., 522.

We think this is a complete answer to the argument of appellants set out on pages 20 and 21 of their brief, vz.: that

the $7,500 has lapsed for the benefit of T. P. Devereux. It makes no difference that there was an *express* provision in the deed creating the power to appoint the $50,000 charge, that "if the said sum of money, or any part thereof, shall remain "unpaid, or shall not be invested during her life, and if the "said *Frances* (NOT THOMAS, as the brief cites it on page 20) "shall not, by deed or will, or writing in the nature thereof, "or by some other act, give, grant, dispose, or direct any pay- "ment or application of the same, then the said sum of money, "or so much thereof as shall remain not paid, given, granted, "disposed, or directed to be invested, paid or applied, shall be "considered as lapsing, and the charge therefor as extin- "guished for the benefit of said Thomas." (*Vide* deed, record, page 15). All this *the law would have implied* even if it had not been expressed in the deed. And the answer is, that the said Frances *did, by her will, appoint* $7,500 *of the charge* to T. P. Devereux "*in trust*," for the purpose of paying certain annuities specified. And the part thus specified was, in the language of Lord St. Leonards, "*taken entirely out of* "*the settlement*," and "*there could be no resulting trust for the* "*benefit of any person under the deed creating the power.*" "*It* "*is to be considered as if it had never been comprised in the* "*trust, because it is absolutely taken out of it by the execution* "*of the power.*"

The next equitable principle controlling the decree made in the Circuit Court at November Term, 1879, is, that, *in the next place*, the residue of the charge of $21,527.67 and the accumulated interest thereon since June 3d, 1849 (the date of Frances Devereux's death), or so much thereof as is needed for those purposes, must be *raised and appropriated*, to the satisfaction of the unsatisfied legacy, of an annuity of $150

per annum, given to Louisa Taylor out of the proceeds, of the house and lot in Chapel Hill and of the fifty-seven slaves, and (subject to the satisfaction of Louisa Taylor's legacy last aforesaid) must then be applied, to satisfy and pay to the appellants, Elizabeth and Georgiana, their unsatisfied claim for one-*third* of the undisposed of net residue of the assets of Frances Devereux, deceased, amounting to $13,877.66⅔, with interest thereon from the 31st of May, 1868, when T. P. Devereux was adjudicated a bankrupt.

Here are two *claims* which the general assets of Frances Devereux ought to have been applied to pay off and satisfy. But those general assets have been otherwise misappropriated and are hopelessly gone. And here, on the other hand, is the residue of a large fund, charged upon the Pollock lands, and, by Frances Devereux, by will, appointed to her executors—for another and different purpose, it is conceded—but yet *appointed to her executors*—and which hitherto they have failed to raise and appropriate to the purpose to which she destined and directed it. That purpose (excepting the payment of the $7,500 to T. P. Devereux in trust, which last, it is conceded by the previous part of this argument, must *first* be provided for) has been answered by the application of the general assets, out of which last, it is admitted on all sides, the *feme* appellees ought to have been paid their $13,877.67⅔, with the accumulated interest since May 31st, 1868. And here we will *explain*, that the appellees have never contended, and do not contend, for the position attributed to them in the appellants' brief at pages 18 and 19, viz.: "that the pecuniary legacies "provided in the will of Frances Devereux were purchased "by Thos. P. Devereux *with her general personal assets, he* "*using the same for that purpose.*" But we contend that Thos. P. Devereux, while apparently acting as executor, and having paid, or purchased, all of said legacies (and we think it is immaterial whether he paid or purchased them), *afterwards* assumed the right to take possession of and convert to his own use *all* of Frances Devereux's general personal assets,

including her slaves, *justifying* his action by the *argument in his answer*, that there was no other fund provided for satisfying the pecuniary legacies, and that he, as the owner of the legacies, or the executor who had paid them, was entitled to take possession of and convert to his own use these general personal assets, which were liable to their payment, without going through the forms of selling the property, including the fifty-seven negro slaves, and paying himself, or having Whiting sell and pay him, with the money which they produced. And this, we say, was an *application and appropriation* of the fund out of which the *feme* appellees' claims and the $150 annuity of Louisa Taylor ought to have been paid, to the payment of the pecuniary legacies, when, in law and equity, they ought to have been paid by raising and appropriating so much as was necessary for that purpose of the $21,527.69 and interest since June 3d, 1849.

Our position *is not* that Thos. P. Devereux took our fund and *invested it* in the purchase of the pecuniary legacies, and, *therefore*, that there is a *resulting trust* in the pecuniary legacies for our benefit, and that T. P. Devereux held them as our *trustee*, and we are now entitled to have them paid to us out of the fund by Frances Devereux's will expressly appointed to her executors for their satisfaction. Our claim to be satisfied out of the fund charged upon the Pollock lands rests in no respect upon the doctrine of a RESULTING TRUST IN THE PECUNIARY LEGACIES, because they were purchased with the general assets of Frances Devereux, to one-third of which we were entitled—as the appellants would fain have it. If we tried to make out such an equity as this, perhaps we might have to trace *the specific assets invested in the purchase of the legacies*. But we rely upon an equity of an entirely different nature and origin, viz.: upon the doctrine of *substitution* or *subrogation*; or, upon the still more simple principle that *there is yet left* a part of the estate of Frances Devereux, secured by a lien on the Pollock *lands*, and sufficient to satisfy and pay our claims, to-wit: the charge of $21,527.67; and

that *all* other claims against her estate having already been satisfied and paid, of course, it is but a simple question of an *equitable marshalling* of the assets, where the regular order of their liability to the claims upon them has been infringed, by a misapplication of the fund which was primarily liable for the satisfaction of our claims; so as to apply what remains to be administered to the payment of recognized demands which would otherwise remain unsatisfied.

The principle of equity upon which the appellees rely is so well established as hardly to need the citation of authorities for its support.

Where there are *two funds* provided for the satisfaction of claims, to one of which one class of claimants are entitled for their satisfaction, and to the other another class, if through accident, mistake, or even willful misapplication, by the person entrusted with the funds, the one class of claimants have been satisfied out of the wrong fund, and it is thereby exhausted, *the fund to which they were really entitled* must be used to satisfy that class of claimants whose rights have been disappointed by the misapplication of the fund to which they were entitled. It is a common application of the doctrine of *subrogation*, and by it the appellees in this case have an equitable lien on the $21,527.67, with accumulated interest, charged on the Pollock lands, and indirectly on the Pollock lands themselves, in the hands of the assignees in bankruptcy of T. P. Devereux, and in the hands of the trustees substituted for T. P. Devereux, since his decease, to subserve the trusts of the deed of July 3d, 1839—to the extent that the aforesaid fund of $21,526.67 is needed for the satisfaction of their claims against the general assets of Frances Devereux, deceased.

If Thos. P. Devereux had lived, and had continued solvent, the precise question in its present shape might never have arisen; the appellees would have had their decree against him for the $13,877.66⅔, and the accumulated interest thereon, to which they are entitled, and it would have been

a matter of indifference to them out of which fund it was paid. But since he has become a bankrupt, and has died, the question necessarily arises against the assignees and trustees into whose hands the Pollock lands have passed charged with the unconsumed residue of the $50,000 fund, which residue Frances Devereux, by her will, appointed to her executors as part of her personal assets, for the payment and satisfaction of her pecuniary legacies. The question has arisen, not necessarily *in the pleadings*, but out of the *changes in the parties* to the suit, and *in the circumstances* of the *parties thereto* since the original bill herein *was filed*, and out of the *facts which were discovered on taking the accounts herein*, and which appear upon the face of the master's report.

This is a complete answer to the complaint of the appellants in their brief, at pages 17 and 18, "that no *lien*" (of the appellees for their claim upon the Pollock lands) "had been "hinted at, much less declared and decreed," until November Term, 1879, and that the plaintiffs did not "make any such "allegation in the bill, nor do they pray for any such relief."

It is not often that *residuary legatees*, or *the next of kin* claiming the *residue of assets undisposed of by the will*, have come into a court of equity to be *subrogated* to the rights of creditors or legatees, or some other class for whose satisfaction the undisposed of residue has been *misappropriated*, alleging that the will has provided *another fund* for their *satisfaction*, which ought to have been applied to that purpose before using the undisposed of residue, in which the residuary legatees or next of kin are interested; and for the reason, that the rights of residuary legatees, or of the next of kin to the undisposed of residue are almost always subordinated by the provisions of the will to the rights of devisees, legatees, heirs-at-law, creditors and all other classes usually interested in the assets of a decedent, and it is rarely the case that a testator gives *express* and *special direction* to *relieve* the *general residue for the benefit of the next of kin* or *descended lands for the benefit of the heir*. But if the testator *does*, by his will, *substitute* another fund

in case of the *general residue*, for the benefit of the next of kin, and his personal representative, misinterpreting the will, MIS-applies the general residue to the purpose for which the *substituted fund was designed* by the testator, a court of equity will apply the *substituted* fund to satisfy the claims of the next of kin to the general residue, which have thus been disappointed, contrary to the intent of the testator. And this is exactly what has occurred in our case. Frances Devereux, by her will, *substituted* the fund of $21,527.67 charged on the Pollock lands, for the payment of her pecuniary legacies, in case of the general residue of her assets, which general residue she left undisposed of, and which, consequently, is for distribution among the next of kin. And Thos. P. Devereux, misinterpreting the will, has misapplied the general residue to satisfy the pecuniary legacies, and now, a court of equity will apply the fund of $21,527.67 charged on the Pollock lands, to satisfy the claims of the next of kin to the general residue, which claims will otherwise be disappointed, contrary to the intent of the testator.

But though the cases are rare in which this equitable doctrine has been invoked *for the relief of the next of kin* claiming part of an undisposed of *residue which has been misapplied*, yet the *equitable* principle itself is too fully established to be questioned, by the numerous cases in which it has been invoked for the protection of simple contract creditors, or specific or pecuniary legatees or devisees, or some other class interested in the disposition which a personal representative has made, or is likely to make, of the assets of his testator.

But if a charge is levied upon a fund out of its regular order, as, for instance, on a devised instead of a descended estate, or on a descended estate instead of the general personality, the *devisee* in the one case, or the heir in the other, may claim *exoneration*. The necessity, however, for such a claim can only exist where the regular order of liability, intended by the testator, has been infringed. Adams' Equity, page 274. And the most common application of this doctrine of

exoneration and *marshalling* is illustrated by administration suits, where debts, or legacies, are charged, some on several kinds of assets, and some on one kind only, *and the doubly charged assets have been applied in discharge of the doubly secured claims.* Adams' Equity, page 274. In such cases a court of equity will take care that the claims of the creditors or legatees, which were so charged on *one* kind of assets shall not be disappointed, because that kind of assets has been exhausted in discharging the doubly secured claims, and gives to those complainants the right to stand in the place of the creditors or legatees who have exhausted the fund set apart to satisfy *them*, and to be reimbursed out of that fund which the creditors or legatees might have resorted to, but did not. Miller v. Harwell, 3 Murphy's Rep. (N. C.), page 194. It being the object of a court of equity, *that every claimant upon the assets of a deceased person shall be satisfied, as far as such assets can, by any arrangement, consistent with the nature of their respective claims, be applied in satisfaction thereof*, it has been long settled that where one claimant has more than one fund to resort to, and another claimant only one, the first claimant shall resort to that fund on which the second has no lien. Lacam v. Mertins, 1 Ves., 312; Lenoy v. Duke of Athol, 2 Atk., 445.

If, therefore, a specialty creditor, whose debt is a lien on the real assets, receives satisfaction out of the personal assets, a simple contract creditor shall stand in the place of the specialty creditor against the real assets. Sagitary v. Hyde, 1 Vern., 455; 1 Eq. Cas. Ab., 144; Wilson v. Fielding, 2 Vern., 763; Galton v. Hancock, 2 Atk., 436; and legatees shall have the same equity. Tipping v. Tipping, 1 P. Wms., 730; Ch. Cas., 117.

So where lands are by the will made subject to the payment of *all* debts, a legatee, whether specific or pecuniary, shall stand in the place of a simple contract creditor who has been satisfied out of the personal assets. Haslewood v. Pope, 3 P. Wms., 323.

And these authorities show, that the appellees, Elizabeth and Georgiana, have the right to stand, in this court, in the place of the pecuniary legatees of Frances Devereux, who, directly or indirectly, have exhausted the fund set apart to satisfy *them*, the said Frances and Elizabeth, and to be reimbursed out of that fund which the pecuniary legatees *might have* resorted to, but which they have left untouched, viz.: the charge of $21,527.87, with the accumulated interest thereon since June 3d, 1849 (when Frances Devereux died), which the said Frances appointed to her executors, by her will, and which is charged upon the Pollock lands, in the hands of the assignees in bankruptcy of T. P. Devereux, and of his substituted trustees under the deed of July 3d, 1839. And, *a multo fortius*, has Louisa Taylor the right to be substituted to the pecuniary legatees' rights against the fund of $21,529.87, because she is *not one of the next of kin seeking her share of an undisposed of residue*; but she is a *pecuniary legatee*, whose *legacy* was, by *express provisions* of the *will, directed to be paid out of the proceeds, of the house and lot in Chapel Hill, and of the sale of the said fifty-seven negro slaves*, which proceeds of house and lot and slaves constituted the greater part—almost the whole—of the general assets of Frances Devereux, which T. P. Devereux converted to his own use, to pay off and satisfy the pecuniary legacies given, one to himself as trustee, and the others to charities, from whom the said Thomas had purchased them.

So, again, a testator devised his real estate to his wife for life, and after her death to be equally divided among all his children, &c., in fee, and directed that his executors should sell any part of his real estate whenever they might think proper so to do, "without any order or decree of the court." He then gave to his wife "*all the negroes which came by her*," *which negroes constituted almost the whole of his personal estate;* and all the residue of his personal estate he lent to his wife for life, and directed the same, at her death, to be divided equally among all his children, &c., in like manner as he had disposed of the real estate.

The debts of the testator far exceeded the residue of his personal estate over and above the negro slaves "*which came by the wife*," and which were specifically bequeathed to her. The executors, supposing that, by this will, *the real estate was charged with the payment of debts*, sold large quantities of valuable land and appropriated and misapplied the proceeds in the payment of debts, and delivered to the wife the negroes specifically bequeathed to her, assenting to her legacy.

Upon suit brought by some of the legatees and devisees in remainder, after the wife's death, it was held: That the real estate, not being by the will charged with the payment of debts, nor having been directed to be applied in that way, it could not be so subjected in exoneration of the personal estate, but ought only to have been resorted to, after the exhaustion of the personal estate, for the purpose of discharging the debts; and that, the plaintiffs were entitled to have an account of the proceeds of the land sold by the executors, to ascertain what was their share of the same; and for the satisfaction of their claim so ascertained, they had a right to be reimbursed out of the personal estate of the testator, including the slaves specifically bequeathed to the wife, which personal estate and slaves *ought* to have been sold by the executors and their proceeds applied to the payment of the debts, but which personal estate had *in fact* been *exonerated* from the burden of the debts by the *misapplication* of the proceeds of the sales of the real estate, to part of which the plaintiffs were entitled. Graham v. Little, 5 Ired. Eq. (N. C. R.), 407.

It is true, the devisor cannot restrain the creditor from subjecting the personal estate; but, as between the legatee and the heir, where the creditor has the right to resort to both the personal and real assets, and exhausts the former, a legatee whose legacy has been thereby disappointed will be substituted to the rights of the creditor against the heir. And the descended lands must exonerate a specific legatee from payment of all debts for which the the heir is bound.

So, if the heir pay the specialty debts of the ancestor, he

may indemnify himself out of *the personal property not given away in legacies;* but the *legatee* cannot be indemnified out of the *real estate,* unless the debt paid by his legacy be a charge upon the heir; and, therefore, he cannot be indemnified for a simple contract debt; where the old common law rules for applying the assets obtain.

So, where land is *devised to be sold for the payment of debts, and the surplus given away as cash, the land is primarily liable,* even as between the heir and the residuary legatee; and if his residuary legacy has been exhausted in the payment of debts, the residuary legatee must be indemnified out of the land devised to be sold for the payment of debts. Robards v. Wortham, 2 Dev. Eq. (N. C. R.), 173. See also, Palmer v. Armstrong, 2 Dev. Eq. (N. C. R.), 268; Powell v. Powell, 6 Ired. Eq., 50.

Louisa Taylor is a *pecuniary legatee* as to her claim for her annuity of $150, and it is too plain for argument, that, if the fund consisting of the proceeds of the house and lot in Chapel Hill, and of the sales of the fifty-seven negro slaves, out of which her legacy was given, has been misapplied to the satisfaction of the pecuniary legacies, for the payment of which the $21,527.67 charged upon the Pollock land was appointed by Frances Devereux to her executors, then the said Louisa Taylor has the right to be reimbursed out of said fund of $21,527.67.

The appellees Elizabeth and Georgiana, it is true, are but *distributees, or next of kin,* seeking their share of *an undisposed of residue;* and it is also true that personal property not disposed of by the will—the undisposed of residue—forms the primary fund for the payment both of debts and legacies; and also of funeral and testamentary expenses; and, as a general rule, the law throws the burthen of paying all these charges, on the property as to which there is an intestacy; and therefore, *apart from the express provisions of the will,* there can be no ground on which the next of kin, claiming the residuary fund, can demand reimbursement, from any other fund,

which was provided, either for devisees, or legatees, or creditors, by the will—or which has fallen on the creditors or heirs or been appropriated by others of the next of kin.

But this rule only applies where there is *no intention of the testator to the contrary* expressed in the will, and where *he has prescribed no particular charge on specific funds* which changes the regular order of administering the assets. If the testator *expressly exempts the property as to which there is an intestacy*—the personal property not disposed of by the will, constituting the undisposed of residue—*from the burthen of paying the debts, legacies,* &c., or if a charge of the debts, legacies, &c., *be fixed by plain words or unavoidable implication on other property exclusively;* then, as to all questions between persons claiming under the testator, *the property so designated by the testator* becomes the *primary* fund for the payment of *debts,* legacies, &c., *to the exclusion* of the undisposed of residue, which is left to be enjoyed by the distributees or next of kin. Kirkpatrick v. Posten, 7 Ired. Equity (N. C. R.), page 44; Elliot v. Porter, 4 Jones Eq. (N. C. R.), page 433.

A testator may, if he choose, exempt an undisposed of residue from the payment of his debts by throwing that burden on other property specifically devised or bequeathed for that purpose, but in order to do this the intention must be very clearly manifested, because the general rule is that intestate property is primarily liable for the payment of debts, even though other property may have been directed by the will to be sold for that purpose. Swann v. Swann, 5 Jones' Eq. (N. C. R.), page 297; Wynns v. Barden, 5 Jones' Eq. (N. C. R.), page 377; McCorkle v. Sherrell, 6 Ired. Eq. (N. C. R.), page 173.

N[illegible], the meaning and construction of Frances Devereux's will is already ascertained by the Supreme Court of the United States; Blake v. Hawkins, 98 U. S. R., page 315. It was the intention of the testatrix that the legacies to charitable purposes and to provide annuities should be paid, and it was her further intention that they should *not* be paid from the

proceeds of the personal property which she owned in her own right; "*she carefully withdrew from any positive application* "*to their payment the personal estate she had in her own right,*" (98 U. S. R., page 327); "*it seems necessarily to follow, that* "*if she intended those legacies to be paid at all, she intended* "*them to be paid out of the fund over which she had the power* "*of appointment.*" (98 U. S. R., pages 327 and 328).

And hence, for identically the same reason which governs every case, where the regular order of liability provided by the testator has been infringed and a charge has been levied on a fund out of its regular order; and the persons entitled to the fund so improperly charged have come into equity to be substituted to the rights of the persons who have enjoyed *their* fund; the appellants, Elizabeth and Georgiana, *though bare volunteers, and next of kin claiming an undisposed of residue,* may come into this court and claim *exoneration* and to be *reimbursed* for their share of the general residue, which has been misapplied to the satisfaction of the pecuniary legacies out of the fund of $21,527.67, charged on the Pollock lands; which fund was appointed by Frances Devereux's will to her executors to pay her pecuniary legacies; and which fund is yet charged on the Pollock lands, in the hands of the assignees in bankruptcy of said Devereux and the substituted trustees. The principle of equity is the same in all these cases.

All these equities depend upon like principles with the equitable rule, that where one has a lien upon two funds, and another, a posterior lien only upon one of them, the former will be compelled first to exhaust the subject of his exclusive lien, and will be permitted to resort to the other only for the deficiency. Everston v. Booth, 19 Johns., 484; Williams v. Washington, 1 Dev. Eq., 137; Dorr v. Shaw, 4 Johns. Ch., 44; Russell v. Randolph, 26 Grath. (Va. R.), 705; Kendell v. New England Co., 13 Conn. R., 394–5; Brandt on Suretyship, &c., section 262 *et seq.;* Eddy v. Traver, 6 Parge Ch. R., 521; Harriss v. Ross, 4 Jones Eq. (N. C. R.), 413; Graves v. Howrad, 3 Jones Eq. (N. C. R.), 302.

The equity of the creditor, who has but one fund to resort to, is not, indeed, *against the creditor having a double legacy at all*, but only against the common debtor, that he shall not be permitted to get back the fund not resorted to, free from its liabilities, on account of the accident of the creditor's recourse to the other. This end can be obtained quite as well by *subrogation* as through *marshalling* by actual restraint. The rights of the double creditor cannot be invaded or impaired. Ramsay's Appeal, 2 Watts, 228; U. S. v. Duncan, 12 Ill., 523; Chapman v. Hamilton, 19 Ala., 121; Neff's Appeal, 9 W. & S. (Pa. R.), 36.

And as Thomas P. Devereux would have had *no equity*, as against the appellees, *to get back the Pollock lands discharged of the* $21,527.67, appointed thereout by Frances Devereux to her executors for payment of her pecuniary legacies, if said Thomas were living and solvent; so the appellants, Hawkins and Clark, the assignees in bankruptcy of said Thomas, representing his general creditors, have no equity as against the appellees, to take the Pollock lands discharged of the $21,527.07 appointed thereout, and to sell them and distribute the proceeds among such general creditors. And for various applications of the same doctrine, *vide* Ellard v. Cooper, 1 Irish L. & E. R. (N. S.), 376; Fordham v. Wallace, 17 Jurist, 228; Livingstone v. Livingstone, 3 Johns' Ch., 158–148; Scales v. Collins, 9 Hare, 656.

The question before the court is really a simple one. The appellants do not dispute the *amount* of the appellees' claim, nor of that of Louisa Taylor, and admits that they are all just claims, and ought to be paid by Frances Devereux's estate. Her personal representative—her executor or administrator *d. b. n., c. t. a.*—who is before the court, is not resisting their payment. It is conceded on all sides that the appellees' claim *ought to have been paid*, as well as Louisa Taylor's annuity of $150, out of the $41,633 of general assets (which included the fifty-seven slaves) which Thomas P. Devereux had converted to his own use before he became bankrupt in 1858, and

that these claims were *not* paid out of that fund. It is not pretended that any other creditors, legatees, devisees, next of kin, or heirs-at-law of Frances Devereux are claiming any part of the fund of $21,527.67 charged on the Pollock lands in the hands of Hawkins and Clark, assignees in bankruptcy, and Clark and John Devereux, substituted trustees.

But Hawkins and Clark, assignees, and Clark and John Devereux, substituted trustees—the only persons resisting the appellees' suit—are claiming to hold the whole of the Pollock lands, *free and discharged from the sum which Frances Devereux* appointed out of them to her executors as part of her personal assets for the payment of her pecuniary legacies; and to sell the whole of those lands and hold and distribute the proceeds ratably and *pari passu* among all of *T. P. Devereux's general creditors.* It is conceded that both the appellees, Elizabeth and Georgiana, and also Louisa Taylor, have the right to prove their respective claims, of the same amount and character as they now allege them to be, against the general assets of Thos. P. Devereux in the hands of his assignees in bankruptcy and trustees, and to receive their ratable share of T. P. Devereux's assets.

But it is insisted by the appellants that the personal representative of Frances Devereux, R. C. Badger, appointed since T. P. Devereux's decease, has no right, *first*, and before the assignees in bankruptcy get any part of the Pollock lands, to have raised out of the same the $21,527.67 which Frances Devereux appointed thereout to her executors, that he may pay therewith or with so much thereof as is needed, the claims of the legatees and next of kin of said Frances Devereux which remain unsatisfied. As we have before said, it is a contention between the *personal representative of Frances Devereux and the assignees in bankruptcy of Thos. P. Devereux* as to which shall have so much of the Pollock lands as belonged to said Frances at her decease. Whether the assignees in bankruptcy shall take said Frances' interest in the Pollock lands to aid in paying Thos. P. Devereux's general creditors,

or if the personal representative of Frances Devereux shall have her interest in said Pollock lands, in order that he may pay certain of her legatees and next of kin who have never received that part of her estate to which they were entitled.

It is certain, that the assignees in bankruptcy of T. P. Devereux cannot set up any beneficial interest or claim which he might have as one of the legatees, and the next of kin of Frances Devereux, in her assets, to defeat the claims of said Frances' other legatees and next of kin, until said Thomas shall fully account for, and make good, both said Thomas' *devastavit* of the $41,633 of general assets, with interest from May 31st, 1868, and the sum of $21,527.67, appointed by said Frances out of the Pollock lands, in said Thomas' hands, with interest thereon from June 3d, 1849, when said Frances made her appointment and died.

The assignees in bankruptcy of T. P. Devereux stand in his shoes in reference to this matter, and it has been held: That an executor who has committed a *devastavit* is under an obligation not to claim any legacy, or distributive share to which he may be entitled, *until he has made good the devastavit* to the extent that it is needed, to discharge the legacies and distributive shares of all others interested. As to him, the primary obligation upon the estate has not been discharged until he has paid the other legatees and distributees to the extent of his *devastavit;* and so far as he is concerned, *there cannot be any fund* to pay his legacy, or residue to satisfy his distributive share, until the discharge of such primary obligation shall have taken place, by his accounting for the assets which he has wasted or applied to his own use. Morris v. Livie, 1 You. & Col. (20 En. Ch. R.), page 380. *Vide*, also, Jeffs v. Woods, 2 Pr. Wms. R., page 128; Skinner v. Sweet, 3 Mad. R., page 244; Hopkins v. Gorran, Mol. R., page 361; 12 En. Ch. R., page 271.

It is true Thomas P. Devereux did not qualify as executor, and did *finally* renounce that office, but it was after he had intermeddled with the assets, and had actually administered

them almost all. And as to such assets as came to his hands, he is dealt with in this court as if he were executor, and is treated as if he were executor for the purpose of being charged with the assets which so came into his hands, and were by him administered, or ought to have been administered. Penny v. Watts, 2 Phil. R. (22 En. Ch. R.), pages 149–152.

THE ERRORS SUGGESTED BY THE APPELLANTS, AND THEIR OBJECTIONS TO THE DECREE OF CIRCUIT COURT AT NOVEMBER TERM, 1879.

We propose to consider, very briefly, the assignments of error in the decree of the Circuit Court herein at November Term, 1879, attempted to be maintained in the appellants' brief.

The appellants *attempt* to maintain the proposition that the decree entered herein at November Term, 1879, of the Circuit Court (record, pages 204 to 208), was not made in pursuance of the *mandate* issued from the Supreme Court after their decision at October Term, 1878; but that, on the contrary, the Circuit Court in entering the decree at November Term, 1879, has failed to observe and pursue the said *mandate* issued from the Supreme Court, and has undertaken to modify and disregard what the Supreme Court had already established or affirmed at October Term, 1878; and the *gist* of the appellants' argument and contention on this point is, an attempt to maintain the proposition *that the Supreme Court held and decided, at October Term,* 1878, *that for whatever sum the plaintiffs, Elizabeth and Georgiana, succeeded in obtaining a decree against the assets of Frances Devereux*, after the new accounting directed, *it must further be adjudged that it must be paid out of the assets and estate of Thomas P. Devereux, in the hands of his assignees in bankruptcy and substituted trustees respectively, ratably and pari passu with the other debts of the said Thomas P., which have been and shall be proved by his creditors against said estate and effects in the hands of said defendants respectively.*

Now, if the Circuit Court has undertaken, in making their decree at November Term, 1879, to disregard and violate the decision and mandate made and issued by this court from October Term, 1878, it amounts to judicial insubordination, which makes the decree erroneous.

It is not necessary for the learned counsel to cite authorities to establish this legal conclusion; it is fully conceded to them. The court to which the mandate is sent is *conclusively bound by it.* Whatever was before the Supreme Court and was settled, is to be considered as finally settled. The inferior court is bound by the judgment as the law of the case, and must carry it into execution according to the mandate. But when it is assumed as a *matter of fact* that the decree made herein by the Circuit Court at November Term, 1879, does violate and disregrd the decision and mandate made and issued by this court from October Term, 1878; *and most of all,* when it is assumed that the Supreme Court, at October Term, 1878, held and decided that the *feme* appellees could have a decree for their satisfaction only against the estate and effects of Thomas P. Devereux in the hands of his assignees in bankruptcy and substituted trustees, and to be paid ratably and *pari passu* with the other debts of said Thomas P. Devereux, which have been and shall be proved by his creditors, against the said estate and effects in the hands of said trustees and assignees respectively; and finally, when it is assumed that the Supreme Court held and decided at October Term, 1878, by anticipation, that as to any *additional sum* which, after *the new accounting* directed by the decree and mandate, should be found coming to the appellees, they could only have a decree against the estate and effects of said Thomas, in the hands of his assignees and trustees, in common with the general creditors of said Thomas—there we are broadly and distinctly at issue with the appellants, and upon a point which the citation of authorities, such as are relied on by the appellants in their brief, has little or no tendency to settle and determine.

A careful examination of the fourteen or fifteen authorities cited by the appellants from the reports of the Supreme Court of the United States, demonstrates that not a single one of the cases cited bears the faintest resemblance to the case in hand.

In the earlier part of this argument we have pointed out what the Circuit Court decided and decreed at June Term, 1874, (record, pages 191, 193). The sections of the decree numbered 1, 2, 3, 4, 5, 6 (record, pages 191, 192), lay down the principles and instructions by which the master shall be guided in stating the account, which is immediately thereinafter, in the next five (5) lines of the decree (record, page 192), ordered to be taken "*upon the basis of the decree, and the "declarations and instructions hereinbefore contained*, and "REPORT TO THIS COURT AT ITS NEXT TERM." Pausing here, it is plain this was only an interlocutory decretal order directing an account; from which there was no appeal to the Supreme Court of the United State. Young v. Smith, 15 Pet., 287; Craighead v. Wilson, 18 How., 199; Perkins v. Tourquet, 6 How., 206; Beebee v. Russel, 19 How., 283; Pulliam v. Christian, 6 How., 209; Crawford v. Points, 19 How., 11; Ogilvie v. Insurance Company, 2 Black., 539.

Then, the parties interested perceiving and agreeing upon what results would follow from an accounting executed "*in accordance with said declarations and instructions*," *waived an actual accounting* and fixed those results by stipulation entered as part of the decree; and the decree in favor of the *feme* complainants, Elizabeth and Georgiana, for $722.21, to be paid out of the estate and effects of Thomas P. Devereux, in the hands of his assignees in bankruptcy and trustees, respectively, *upon the footing of the other general creditors of said Thomas, necessarily followed.*

The effect of the declaration of the Circuit Court, of the *basis and principles* upon which the account ordered was to be taken, was to decree that the said *feme* complainants were entitled only to an account of *the general personal assets of*

said Frances, and NOT TO AN ACCOUNT OF ANY FUND CHARGED UPON THE POLLOCK LAND; consequently, for such sum as said complainants had a decree, there was no other fund for its payment but the general assets of said Frances, which had all perished, and the personal liability of Thomas P. Devereux, who had been adjudicated a bankrupt.

If the regular course of practice in the Circuit Court sitting in equity had been followed, the decretal order would have ended with the (5) lines on page 192 of the record, immediately following the paragraph numbered (6); and all that follows would have been the *final decree* to be entered at the next succeeding term, after the master's report was in; after which final decree the complainants would, for the first time, have been in a position to have appealed to the Supreme Court, both from the *decretal order settling the basis, principles and instructions which were to guide the master* in stating the account, and from the *final decree*, pronounced after the account had been taken upon said basis, principles and instructions, and reported to the Circuit Court, and (after exceptions thereto) had been confirmed—*fixing the amount* of Frances Devereux's general assets to which complainants were entitled.

Every *error* which was assigned in the record, and in the printed brief for the appellants, at October Term, 1878, of the Supreme Court of the United States, was in the nature of *an exception to the basis, principles and instructions* which the Circuit Court laid down at June Term, 1874, to control the taking of the account, directed, and the appellants *then* (appellees *now*), assign for error every one of the six (6) propositions laid down in the several paragraphs of the decree, numbered respectively 1, 2, 3, 4, 5 and 6. Blake v. Hawkins, 98 U. S. R., pages 323–324; *ibid*, pages 321–323; Decree at June Term, 1874; Record, pages 191 and 192; Mandate of Supreme Court, Record, pages 196–197.

The errors assigned by the *feme appellees* at October Term, 1878, of this court (they being the appellants in the appeal

then pending), were as follows, only changing *the references to the pages of the record*, so as to make that assignment of errors fit the present record:

"ASSIGNMENT OF ERRORS.

"There is error in this decision and decree: because—

"1. Under the circumstances of this case, T. P. Devereux was liable to "account with the plaintiffs, as Frances Devereux's executor, for *all* her "personal assets.

"2. Frances Devereux's will was an appointment of the *whole* of the "$50,000 charged upon the land conveyed to T. P. Devereux by deed of "July 3d, 1839, to be *part of her general personal assets* in the hands of her "executors.

"3. The instrument styled in the answer of T. P. Devereux 'The Deed "of Explanation,' executed by Frances Devereux in 1845 (record, page "62; Exhibit X, with answer of T. P. Devereux, record, page 76) was not "effectual for any purpose; it was no *deed;* it was *void;* it has no operative "words of release or receipt; it was *presumptively* fraudulent for T. P. "Devereux, a trustee, to take such an instrument from his *cestui que trust.* "It cannot be used in this case even as *evidence* to correct the alleged mis-"take in the deed of July 3d, 1839: and it in no manner affects the annuity "of $3,000 so as to reduce the amount thereof.

"4. Thomas P. Devereux, as executor, ought to be charged with all "*arrears* of the whole of the $3,000 annuity created by the deed of July "3d, 1839, charged on his land, which remained unexpended or unap-"pointed by Frances Devereux at her death, as part of her personal assets, "which were in his hands as her executor.

"5. In taking the account of said Thomas P. Devereux as executor, the "paper-writing, bearing date October 20th, 1846, signed by Frances Deve-"reux (Exhibit E E, with Mr. Commissioner Page's report, record, page "163), which was not pleaded or set up in the answer, ought not to be "regarded as a *stated account*, CONCLUSIVE *of all matters of account between "the said Thomas P. and the said Frances previous to and including the 22d "June*, 1846, the same being at most but a *receipt* or *admission* by said "Frances, and affording only *evidence* of no very great weight, under the "circumstances proved before the master, of the matters therein admitted.

"6. In taking the account of the said Thomas P. as executor, the paper-"writing, bearing date in the year 1847, signed by Wm. D. Cooke (Exhibit "B B, with Mr. Commissioner Page's report, record, pages 164–165), which "was not pleaded nor set up in the answer, ought not to be regarded as a "*stated account*, CONCLUSIVE *of all matters of account between the said Thomas "P. and the said Frances, previous to and including the 21st day of June*, 1847, "the same being founded upon "E E," and at most only an admission by "agent of Frances Devereux, never intended as a memorial of an *actual* "accounting by said Thomas P. Devereux."

Every point discussed in the *opinion* of the Supreme Court at October Term, 1878, is with reference to the *six propositions aforesaid*. (Opinion in Blake v. Hawkins, 98 U. S. R., 324 to 331). There was no suggestion at the argument, nor is there any in the opinion of the court, nor in the briefs of counsel, nor upon the face of the record, that the *Circuit Court* had, or had not, committed errors in giving a decree in favor of the complainants, *only against the estate and effects of Thos. P. Devereux, in the hands of his trustees and assignees in bankruptcy, to stand upon the footing of all other debts in general owing by the bankrupt.* If the *six* (6) *instructions* laid down by the Circuit Court for the control of the master in stating the account ordered, could be sustained as sound, without doubt, the residue of the judgment at June Term, 1874, *was free from error*, and hence, no point was made, or could have been made, by either party, upon the action of the Circuit Court in this respect. There was no instruction given in the *mandate*, for the guidance of the Circuit Court upon this matter, as to which it is *claimed* by the *appellants now*, it was conclusively settled against the *feme* complainants at October Term, 1878, of the Supreme Court.

To us the point made by the appellants seems so clearly against them, that all reasoning upon it tends to confuse, and no argument against it is so strong as a *simple perusal of the record itself, of the statement of the case contained in* 98 *U. S. R., pages* 315 *to* 324, and of the *opinion herein of the Supreme Court at October Term*, 1878; 98 U. S. R., pages 321 to 334.

Frances Devereux, at the date of her decease, in June, 1849, had a right to appoint a sum of $21,527.67, which was a charge upon the Pollock lands, conveyed by her to T. P. Devereux in the deed of July 3d, 1839. It was her money, to which she was as well entitled as to any other debt due her. She appointed this fund by her will, to her executors, for the payment of the pecuniary legacies bequeathed in said will, amounting to $28,500. (Blake v. Hawkins, 98 U. S. R., pages 324, 329). The fund of $21,527.67 has never been

raised by her executors out of said Pollock lands—it has never become part of her assets, because those dealing with her estate have thought, and the Circuit Court had *held*, that her will did not appoint the fund to her executors for the payment of her pecuniary legacies, nor for any other purpose, unless it was necessary to resort to this fund for the payment of these legacies, after exhausting all her general personal assets in the payment of her debts, funeral and testamentary expenses and legacies. The Supreme Court, at October Term, 1878, *held*, that the will appointed the said charge of $21,527.67, and the whole thereof, to be part of her personal estate in the hands of her executors for the payment of her pecuniary legacies; in effect, that it was *the* fund, and *the only fund*, which said Frances, by her will, appropriated to the payment of her pecuniary legacies, and has directed a *new accounting*, in which the said fund MUST *be ascertained and disposed of;* and now, forsooth, the main objection made by the appellants to the decree of the Circuit Court which is before this court for review, is, that the Circuit Court *has* taken an account of said fund, *has ascertained its amount and directed how far it is to be applied to the payment of the appellees' claim*, because, as the appellants allege, *in so doing* the Circuit Court has not obeyed and regarded the mandate sent down from this court at October Term, 1878, to the Circuit Court at June Term, 1879.

Perhaps an illustration will make the case clearer. Suppose A, having a power by will to appoint $20,000 charged upon the land of B, dies and leaves a will in which C is named executor. Suppose, then, that the next of kin file a bill in equity against the executor, to obtain their share of the undisposed of residue, alleging, among other things, that the testator, A, had, by his will, appointed the $20,000 charged

upon the land of B, to the executor C, to be part of his personal estate in the hands of his executor for the payment of legacies; but that by collusion between C, the executor, and B, the owner of the land subject to the charge, the fund appointed thereout had never been actually raised and appropriated as directed by the will. And suppose, that, to this bill, B (the owner of the land charged with the $20,000), is also made a party defendant. Suppose, further, the Circuit Court had held, *inter alia*, that the will did not *appoint* the $20,000 charged upon B's land, to C, as executor, for the payment of legacies, and had given the next of kin *only a personal decree against the executor C*, for their share of the undisposed of residue of A's assets in the hands of C.

Then the next of kin appeal to the Supreme Court of the United States, assigning various errors in the decision and decree of the Circuit Court, upon points affecting the general assets, and also an additional error, in that "the Circuit Court "had *held*, that A's will did not appoint the $20,000 charged "upon B's land, to C, as executor, for the payment of lega-"cies."

The Supreme Court decides *all the other points* made by the next of kin against the decree of the Circuit Court—*adversely to them*—but holds that the point, "that the will of A had appointed "to C, as executor, the $20,000 charged in the land of B, and that by collusion between B and C, this fund had never been raised out of the land of the latter," had been well taken by the appellants.

The Supreme Court sends its *mandate* to the Circuit Court, stating that their *decree* had been reversed, pointing out the error which they had committed and which had caused the reversal, directing a new accounting, and enjoining them to enter a decree *in accordance with the opinion of the Supreme Court*, and commanding that "*such execution and proceedings* "*be had in conformity with the opinion and decree of the* "*Supreme Court, as according to right and justice and the laws* "*of the United States ought to be had.*"

The Circuit Court, after recording the mandate from the Supreme Court, orders the new accounting, directs the master, in stating the account, to regard the will of A as an appointment of the $20,000 fund, charged upon the land of B, to C as executor, for the payment of legacies. The master takes the account upon this basis, and makes his report, showing, among other things, the present value of the fund charged upon B's land, and that it has never actually been raised thereout and paid to C, as executor, but that he has paid the legacies out of the general personal assets.

We will suppose the *decree* then rendered by the Circuit Court *is not simply a personal decree against C, but that it goes further, and directs the* $20,000 *charge to be raised out of B's land, and next of kin's claim to be paid with so much thereof as it calls for.*

Can it be possible, that this decree of the Circuit Court would be *erroneous* because of the manner in which it dealt with the $20,000 charge, and upon the ground that the Circuit Court had not observed and conformed to the mandate from the Supreme Court? Such a position seems too absurd to merit confutation; and yet there is no substantial difference between it and the one taken by the appellants, which we are now considering.

In our case the person whose land was subject to the charge was *the same person* named as executor in the will; and, while he *has undertaken* to renounce that office, he has yet *so far intermeddled with the assets as to make him chargeable, as executor*, with the assets which have actually come to his hands; and *he has died* during the pendency of the suit, *and another person has been appointed administrator* of the testatrix *de bonis non*, with her will annexed; and before he died *he was adjudicated a bankrupt, and his assignees were nominated, and he has assigned to them*, together with his other property, *such beneficial interest as he had, and could assign, in the land subject to the charge;* and those *assignees in bankruptcy have also been made parties defendant* in the suit—yet none of these

matters have any effect for the purpose of distinguishing our case from the hypothetical one suggested in reference to the point under discussion.

Indeed, most of the difficulties we have to encounter in the case in hand, otherwise free from doubt or difficulty, grow out of the accidental circumstances, in no manner touching the merits of the case, that Thos. P. Devereux has filled the *role* of so many of the *dramatis personæ*, and marriage or death, or financial disaster, during the extraordinary length of time the complainants' pursuit of their rights has been protracted, have effected changes in the position of so many of the original parties, at the same time introducing others upon the scene, that of necessity it produces some *confusion of ideas.*

Now, Thomas P. Devereux was not only named as one of Frances Devereux's executors, and failed to qualify, but at the same time he so intermeddled with the assets as to make himself chargeable as executor; and he was also one of *her heirs-at-law and next of kin*, and a *legacy is given to him "in trust"* by the will; and *he held the land subject to the charge of* $21,527.67, which Frances Devereux had the power to appoint, and did appoint, to her executors. He also was the person who converted all the assets of Frances Devereux, including the fifty-seven slaves, to his own use; and he conveyed a portion of said slaves to Duncan in trust for Frances Ann Polk. He has also become bankrupt—has made a general assignment of his property under the bankrupt law—and has died insolvent. If he had simply been the executor named in the will—neither being next of kin or legatee—and the $21,527.67 had been charged upon some one else's land, and T. P. Devereux had continued solvent, and had lived up to the present time, it would be very plain that, having used Frances Devereux's general assets to pay legacies given by the will, or having purchased the legacies and then converted the assets to his own use, because he was the owner of the legacies, the $21,527.67 charged upon the Pollock land must now be raised and appropriated to the payment and satisfac-

tion, *first*, of such legacies given by the will as yet remain unpaid, *and then* for the benefit of Frances Devereux's next of kin. By reason of the accident that Thos. P. Devereux is *also one of the next of kin, he is entitled to one-third of the general residue;* but it is to be remembered, that as he is also the person upon whose land the $21,527.67 and interest from June 3d, 1849, was charged, *and that as it has never been raised out of the land, he has actually enjoyed the benefit of all that fund*, as well as the whole of the general assets of Frances Devereux, including the fifty-seven slaves. In fact, he has had the whole of every particle of Frances Devereux's estate, real and personal, including the fund over which she had power of appointment, ever since her decease in June, 1849, until now, excepting what he saw fit to give to Frances Ann Polk. It is true, also, that he *gave away* a part of the slaves, October 13th, 1852, to Duncan, as trustee for Frances Ann Polk; but the complainants are not accountable for that, and, in fact, it does not touch their rights against him at all, what disposition he made of the assets after he once converted them to his own use—whether he kept them, lost them, or gave them away. (Haglar v. McCombs, 66 N. C. R., 345).

Probably Frances Ann Polk got little, if any, more than her share, *or third*, as one of the next of kin, of the general personal assets when Thos. P. Devereux conveyed part of the slaves to Duncan in trust for her. The slaves conveyed to her were valued at only $7,130, and this share was charged with $418.88 for Thomas P. Devereux's benefit, equalling $6,711.12, while the share retained by Thos. P. Devereux was valued at $12,861, which, increased by the $418.88 aforesaid, equalled $13,279.88. (*Vide* Exhibit, with amendments to T. P. Devereux's answer, record, pages 107, 108; also, Exhibit O, with T. P. Devereux's answer, record, pages 101, 102). Showing, also, that Thos. P. Devereux, on the 13th of October, 1852, converted to his own use negro slaves valued at $18,991, and then gave Frances Ann Polk of these negroes a share valued at $6,711.12. The share of

the complainants of the assets composing the general residue is, as is agreed on all sides, $13,527.67, but this is with the interest computed up to 31st of May, 1868. Calculating interest on the share of the slaves given by said Thomas to said Frances Ann, $6,711.12 from the 13th of October, 1852, to 31st May, 1868—fifteen years, seven months and eighteen days—the interest is $6,295.03, making the share of the negroes received by said Frances Ann equal, on 31st of May, 1868, to $13,006.15. So, calculating the interest on the share of the negroes retained by said Thomas at $13,279.88 from 13th October, 1852, to 31st May, 1868, the interest equals $12,455.52, making the share of the negroes retained by said Thomas equal, on 31st of May, 1868, to $25,736.40. Showing, also, that the value of all the negroes converted by said Thomas on 13th of October, 1852, $19,991, created a charge against him of $38,742.55 on the said 31st of May, 1868.*

This is not the proper place, time or forum to examine in detail the various accounts and collate the results arrived at, in order that we may show, that it is not possible that any beneficial interest which Thomas P. Devereux had in the assets of Frances Devereux can be invaded by decreeing payment to be made to the legatee Louisa Taylor, and to the *feme* appellees who are next of kin, out of the $21,527.67 and accumulated interest since June 3d, 1849, charged on the Pollock lands; but in an appendix we have made a statement, gathered from the records, showing that, allowing to T. P. Devereux all to which he is entitled, and to Frances Ann Polk all she is entitled to, there yet remains enough of the fund of $21,526.67 and accumulated interest since June 3d, 1849, charged upon the Pollock lands, to satisfy all the claims of

*Note.—In the Account D, record, page 143, it will be seen that Thos. P. Devereux, by reason of a small mistake of the master, is charged with all these negroes, valued at $19,991, and the interest for fifteen years, six months and seventeen days, $18,647.14, which, together, equals $38,638.14, and not with $38,742.55. The master's mistake was in computing interest for too short a time by one month and one day.

Louisa Taylor, and of the appellants Elizabeth Blake and Georgiana Townsend. Indeed, there is no pretence to the contrary by the appellants; they do not attempt to show anything to the contrary, neither in their assignment of errors or in their argument and brief. The substance of the complaint of the appellants, who are trustees and assignees in bankruptcy of T. P. Devereux, is, that they desire to sell the Pollock lands, discharged of the lien for $21,527.67 and interest, and apply the proceeds to the payment of *Thomas P. Devereux's creditors*—giving to the next of kin of Frances Devereux, who are appellees, and to her legatee, Louisa Taylor, only an equal proportion of the proceeds with T. P. Devereux's other creditors; and that said legatees and next of kin of said Frances shall not first be paid with so much of the Pollock lands as belonged to Frances Devereux, and constituted a part of her estate, consisting of the charge for $21,527.67 which she had thereon. The whole force of the appellants' argument is directed to an attempt to show that, in some incomprehensible way, the Circuit Court, in entering their decree at November Term, 1879, did not conform to the opinion and mandate which eminated from this court at October Term, 1878.

The answer, in short, is, that the Supreme Court, at October Term, 1878, had nothing before it for decision, *except the settling of the instructions, which were to guide the master in stating the new account, which they therein directed to be made.*

The Circuit Court, at November Term, 1879, after recording the mandate sent down to them from this court, did direct a new accounting, and ordered that the account should be taken on the exact *basis and principles* which the Supreme Court had laid down for their guidance in their opinion and mandate; as will be seen by examining the sections of their *decree* numbered 1, 2, 3, 4, 5 and 6, each one *containing a proposition decided by this court at October Term*, 1878, and all of them together containing *every proposition* which was so decided by this court. (Record, pages 204–205). All that

follows in that decree was upon matter which arose subsequent to the settlement of the foregoing six propositions, *upon new matter*, which had not been touched, and *could not have been touched* by this court, either in their *opinion* at October Term, or in the *mandate* issued in pursuance thereof. (Record, beginning at section 7, on page 205, and pages 206, 207 and 208).

The appellants, however, after stating (on the 3d page of their brief), that the Circuit Court had decided at June Term, 1874, that Frances Devereux did not appoint the fund of $50,000 charged on the Pollock land, except so far as it was necessary to resort to it after exhausting all her other assets in the payment of her debts, funeral and testamentary expenses and legacies, for the payment of her legacies: that *this* court had decided that, Frances Devereux did appoint that fund to her executors for the payment of pecuniary legacies, and that there is error in so much of the decision of the Circuit Court, as is immediately hereinbefore stated: then go on to point out, that this court had *further decided*, that *all* the undisposed of balance of the charge had been appointed by the will, because there was not more than enough of it to pay the pecuniary legacies (pp. 3 and 4 of appellants' brief)—citing the language of the opinion, and concluding with that part of it which decides "*there has been no other error committed except the single one which we first noticed. For that, however, the decree of the Circuit Court must be reversed, &c., &c.*"

The appellants add, that the mandate conforms to the opinion of the court, and then cites so much of the language of the *mandate* as orders a new accounting and to enter a decree in conformity with the opinion of this court, and as enjoins upon the Circuit Court "such further proceedings as according to "right, justice and the laws of the United States ought to be "*had.*" (Appellants' brief, bottom of p. 4 and top of p. 5).

The appellants then announce, that the decree rendered by the Circuit Court at June Term, 1874, decreed to the appellees, Elizabeth and Georgiana, $722.34, to be paid to them by the

appellants out of T. P. Devereux's estate and effects, ratably and *pari passu* with other creditors. (Appellants' brief, p. 5). They then add, "this paragraph and the last paragraph of the "decree (*of the Circuit Court at June Term*, 1874), found on "the same page (p. 193 of the record), place the plaintiffs as "to the sum of money decreed to them, on equal footing "with all the other general creditors of Thomas P. Devereux "in bankruptcy. They were not entitled to, nor did the decree "give them, any advantage over any other creditors of Thomas "P. Devereux; they were allowed to share in the Court of "Bankruptcy with the other general creditors." (Appellants' brief, page 5).

The conclusion of the appellants, from the foregoing propositions on same page (5), then follows: "*This part of the decree* "*was affirmed by this court.* The only effect of the decision "of this court was to increase the fund in which the plaintiffs "were entitled to share, it left them to share in the increased "fund just as they were allowed to do in the fund mentioned "and designated in the decree on page 193 of the transcript; "this was the plain effect of the decision of this court, and "the mandate so directed." (Appellants' brief, page 5 at the bottom).

Now, this is *assertion*, but it is not *argument;* and I challenge the appellants to put their finger upon the language in the *opinion* or in the *mandate* which declares that, for the *increased sum* for which the plaintiffs would necessarily get a decree, after the assets were increased by the sum appointed in the new accounting, these plaintiffs must share with the general creditors of Thomas P. Devereux. There is no such thing, either in the opinion nor in the mandate.

The appellants then (appellants' brief, page 6) cite the 9th paragraph of the decree of the Circuit Court at November Term, 1879—which *declares* that T. P. Devereux purchased the pecuniary legacies BEFORE November, 1862 (at which time Whiting was appointed administrator *c. t. a.*); that after he purchased, and before the date of Whiting's administration

c. t. a., T. P. Devereux converted to his own use all the general personal assets of said Frances, amounting to $41,633 on the 31st of May, 1868 (when T. P. Devereux became bankrupt), claiming the same to belong to him to satisfy the legacies, and the sum of $7,500 bequeathed to said T. P. Devereux in trust; which next declares that Louisa Taylor's annuity for $150 per annum was a first lien on said $41,633 of general assets, and then that the plaintiffs ought to have been paid one-third of the general assets, subject to the burthen of one-third of the $150 annuity to Louisa Taylor, and then *declares*, "that the said pecuniary legacies purchased by the "said T. P. Devereux, and the sum of $7,500 ought to have "been paid out of the fund charged and appointed by the last "will and testament of Frances Devereux, on and out of the "lands of Thos. P. Devereux, and the money to satisfy the "same ought to have been raised on and out of said land, and "that said lands were exonerated from said burden by the use "by said T. P. Devereux of the general personal assets afore-"said, whereby the plaintiffs have become entitled to have their "aforesaid one-third of said general personal assets, burdened "as aforesaid, paid out of the proceeds of said lands in the "hands of the defendants, and the said Louisa N. Taylor has "become entitled to have the value of her aforesaid annuity "of $150 per annum paid to her out of the said proceeds of "the said lands, and in preference to the said claim of the "plaintiffs," and it is declared further, "that the last aforesaid "claim of the said Louisa N. Taylor is a THIRD lien upon the "said proceeds of lands in the hands of the defendants, and "the last aforesaid claim of the plaintiffs is a FOURTH lien on "the same, and that *both* of said claims are to be paid by the "defendants out of the said proceeds, in the relative order in "which the same are next hereinbefore stated, in full, if the "said proceeds shall be sufficient to pay BOTH of the same in "full, and if not sufficient, then that the claim of the said "Louisa N. is to be paid in full, and the claim of said plain-"tiffs shall be paid as far as said proceeds shall extend to "satisfy the same." (Record, pages 6, 7).

The appellants, in their brief, then insist that this was giving the plaintiffs a specific lien on the fund in the hands of the defendants, and changed, in a substantial respect so much of the decree of the Circuit Court at June Term, 1874, as put the plaintiffs, for the amount of their recovery, on the same basis with T. P. Devereux's general creditors in bankruptcy against the assets and estate of T. P. Devereux, "and this, "notwithstanding this court had affirmed that part of the "decree of June Term, 1874, so reversed and modified by the "Circuit Court in its decree of November Term, 1879." (Record, page 7).

Undoubtedly, the Circuit Court, at November Term, 1879, gave the plaintiffs a lien on the fund of $21,527.67 charged on the Pollock lands, in the hands of the defendants, for the amount of their then recovery; and they would, if it had been asked for or needed, have also have given them a right to share with T. P. Devereux's general creditors in his estate and effects, in the hands of his trustees and assignees in bankruptcy, for so much of their claim as they could not make out of the fund of $21,527.67 charged on the Pollock lands in the hands of the defendants. An additional fund had been brought to the attention of the Circuit Court, out of which the plaintiffs were entitled to be satisfied, and the court gave a decree reaching that new fund, in addition or supplement to the former decree, rather than changing it or its principle. And here again is the assumption, that the Supreme Court had decided, at October Term, 1878, and said in its mandate from that term, that, for whatsoever sum the plaintiffs succeeded in obtaining decree, they must take it only against the estate and effects of Thomas P. Devereux in the hands of his assignees in bankruptcy, to be paid thereout ratably and *pari passu* with the claims proved or to be proved by his general creditors against said estate and effects, when no such principle is declared or even hinted at in the opinion of the Supreme Court at October Term, 1878, or in their mandate embodying that opinion. This is repetition—not argument. And again,

the appellants say this was error—not only—because it was violative of the mandate from the Supreme Court, but also—because the facts of the case did not authorize a court of equity to declare and enforce the liens and preferences asserted in the ninth paragraph of the decree at November Term, 1879; upon which last position, and in response thereto, we have already said all that we desire; and we do not find in the bare denial of our position, without reason for the denial, enough to challenge additional argument on our part.

The appellants next note the eighth paragraph of the decree at November Term, 1879 (record, page 200), where the Circuit Court declared that T. P. Devereux had never raised and appropriated the $7,500 appointed to him "in trust" under the eighth item of the will, "out of the lands conveyed "to him by the deed of July 3d, 1839"—that all the annuitants provided for by said eighth item were dead or had abandoned their claims (since January 1st, 1863), except Louisa Taylor, who was still living—and that there was, consequently, a resulting trust in one-third of the $7,500 and interest thereon from January 1st, 1863, to the plaintiffs, subject, however, to Louisa Taylor's claim for one-third the value of her annuity of $50 per annum—which claims of Louisa Taylor and of the plaintiffs are declared "first liens on the "lands of Thomas P. Devereux and on the proceeds thereof, "in the hands of the defendants," and "are to be first paid "in full by the defendants with and out of the proceeds of "said lands." (Brief of appellants, pages 7 and 8).

The brief then declares, this is error: (1) Because it is violative of the mandate from Supreme Court, and, (2) Because there is nothing in the record which warrants such declaration—but offers not one word of argument in support of these propositions, which are themselves but repetitions.

The appellants go on in their brief to quote the eleventh paragraph of the decree at November Term, 1879, of the Circuit Court (record, page 207), which declares, that it appeared to the court, that Louisa Taylor had proven and filed her

claims for legacies, in the Bankrupt Court, 26th March, 1869, against the estate of T. P. Devereux, as a debt secured by lien on the lands of said T. P. Devereux, and fixes the present value of the annuities constituting her claim. (Appellants' brief, page 9). And then quote that part of the decree which declares that the reference and account waived by the parties is unnecessary, and enters up a recovery in favor of the plaintiffs and of Louisa Taylor for such sums as they are entitled to, against the defendants, trustees and assignees as aforesaid "to be paid and satisfied out the proceeds of the "sales of the said Pollock lands, in their hands respectively." (Appellants' brief, pages 9 and 10; record, pages 207–208). And the cousel then assign it for error in all this: (1) Because it is violative of the mandate from the Supreme Court. (2) Because Louisa Taylor is not entitled to anything; if she is, it is not a lien upon the fund in the hands of the defendants; and she can only prove as a general creditor of T. P. Devereux, against his assets. (3) Because the plaintiffs, Blake and wife and Townsend and wife, are not entitled to receive anything, and if they are, their claims are not a lien on any fund in the hands of the defendants; and they can only prove against T. P. Devereux's general assets in bankruptcy along with his other creditors. (4) Because it was error in the Circuit Court to allow Louisa Taylor to file her petition herein. (5) Because the court ought to have decreed that Louisa Taylor's claims for legacies were barred by the statute of limitation. (6) It was error in the Circuit Court to decree that Louisa Taylor's claims for legacies were liens on the Pollock lands. (7) It was error in the Circuit Court not to sustain the exception of the defendant to account D, and to charge T. P. Devereux with more than half the value of Thomas Devereux's negroes.

The counsel then cite numerous authorities to sustain a point of law which no one questions—certainly we do not—viz.: That the Circuit Court must obey the opinion and mandate from this court; that it has no power to change or modify, in any respect, what the Supreme Court has estab-

lished or affirmed; that the mandate explained by the opinion of this court must be observed, and the Superior Court is bound by the decree of this Court, as the law of the case. (Appellants' brief, pages 11, 12, 13).

The appellants then, again insist, and repeat, that because the Supreme Court said, in their opinion at October Term, 1878, "Our conclusion, therefore, is, after reviewing the "whole case, there has been no error committed, except THE "ONE WE FIRST NOTICED;" which error was, in holding that the part of the $50,000 charge on the Pollock lands, which remained unappointed by Frances Devereux during her life-time, was not appointed by her will to her executors as part of her personal effects for the payment of legacies; and because in the decree which came up on appeal and was reversed, the plaintiffs had recovered such sum as they HAD a decree for, against the assignees in bankruptcy of T. P. Devereux, to be paid out of his estate and effects in their hands, ratably and *pari passu* with his other creditors, who had proved, or should prove, their debts against his estate in bankruptcy; that, therefore, the Supreme Court *held*, at October Term, 1878, that for such sum as the plaintiffs should obtain a decree, after the new accounting, they could only have recovery against the estate and effects of Thos. P. Devereux, in the hands of his trustees and assignees in bankruptcy, to be paid ratably and *pari passu* with his other creditors who had proved, or should prove, their debts. (Appellants' brief, pages 13, 14, 15).

And they again point out, what is very apparent on the face of the record, viz.: that the Circuit Court, in the proceedings had after the new accounting, did render a decree in favor of the plaintiffs and Louisa Taylor, which was NOT simply that they recover the respective amounts to which they are entitled, of the estate and effects of T. P. Devereux, in the hands of his trustees and assignees in bankruptcy, to be paid thereout ratably and *pari passu* with the claims of the

other creditors of said Thomas, who have proved, or who shall prove, their debts in bankruptcy. (Appellants' brief, pages 16, 17, 18).

We think this argument is plainly fallacious, and for more than one reason, some of which we have before indicated. We think that the plain and simple answer to the argument is—as we have already said—that at the October Term, 1878, nothing came up for the review, or was reviewed by this court, except the principles upon which the account ought to be stated; that, as to these principles, the Supreme and the Circuit Court were in entire accord, except upon the single matter wherein the Circuit Court was reversed; and that the Supreme Court directed, in the new account that must be taken, the instructions given by the Circuit Court should govern, except only that the master must treat Frances Devereux's will as an appointment to her executors, for the purpose of paying her pecuniary legacies, of the whole fund of $21,527.67 charged upon the Pollock lands.

And that in the decree which was entered at November Term, 1879, the principles regulating the accounting laid down by the Supreme Court at October Term, 1878, were strictly followed, observed and maintained.

That the additional questions of law and equity, to those which had been before the Circuit Court at June Term, 1874, and before the Supreme Court at October Term, 1878, decided in the decree at November Term, 1879, grew out of matters that arose only after the appointed fund was brought as an item into the account, and could not possibly have been passed upon by the Circuit Court at June Term, 1874, nor by the Supreme Court at October Term, 1878; and, therefore, it is impossible for any of these new matters to be violative of the opinion and mandate from this court at October Term, 1879.

But the foregoing is not the only respect in which the appellants, in their brief, insist that the decree of the Circuit Court, now under review, was violative of the opinion pronounced herein by the Supreme Court of the United States at October Term, 1878, and of the mandate issued thereon to the Circuit Court, and consequently was erroneous.

The appellants say that the "Circuit Court * * * in "allowing the petition, and settling the rights of Louisa N. "Taylor, ignored and did not observe and pursue the mandate "from this court." (Appellants' brief, (1) page 8). And they add, "there is error, in that the Circuit Court allowed the "said Louisa N. Taylor to file her petition (see the same on "page 199 of the transcript) before or after the filing of the "mandate from this court." (Appellants' brief, (4) page 11). The appellants also assail the *regularity* and *legality* of the means, method and practice, adopted by Louisa Taylor, for bringing her claims to the attention of the Circuit Court; and, in another part of their brief, they assail the merits of those claims; and, in yet another part, they deny that this claimant was entitled to the particular relief which the court decreed her. But the point now made by the appellants, is not as to the merits of Louisa Taylor's claims, or her right to the special relief which has been decreed her, but is the narrower question, whether the Circuit Court was forbidden, by force of the previous opinion of this court, and the mandate eminating therefrom, from considering the said Louisa's claims at all. So far as this question is involved, this court is not called upon to determine the character and validity of the claims presented, whether they constituted liens upon the $21,527 charged on the Pollock lands in the hands of the trustees and assignees, or stand as simple debts against the bankrupt, Thomas P. Devereux, or whether the right, if any, ever existed, of the holder to share in the fund has been lost by her *laches*. This court has only to determine, whether there is anything in its decision at October Term, 1878, reversing the decree entered by the Circuit Court at June

Term, 1874, or in its mandate to the Circuit Court, whereby the Circuit Court was prohibited from hearing the petition of Louisa Taylor and taking her claims under consideration.

If the decision of this court had been an *affirmamee* of the previous decree rendered by the Circuit Court, there would be more force in the position that the Circuit Court was forbidden by the force of its previous decree, when affirmed by this court, from entertaining the said Louisa's petition and considering her claims. But as this court reversed the previous decree entered by the Circuit Court—with great respect to the learned counsel—this point made by the appellants, to us seems so very absurd as not to merit consideration.

But even if this court had affirmed the previous decree of the Circuit Court, there would have been no force in it to forbid the consideration of Louisa Taylor's claims by the Circuit Court. It is settled law that the judgment or decree of an inferior court, when affirmed by this court, is only conclusive as between the parties upon the matters involved. It does not conclude the rights of third parties now before the court, or in any respect affect their rights. It acquires no additional efficacy by its affirmance. And, as an adjudication upon the rights of the parties between themselves, it has the same operation before as after its affirmance.

We shall content ourselves by citing a single authority on this point. A decree of a Circuit Court of the United States, affirmed by this court, had determined that certain parties then before the court as claimants and intervening claimants, were entitled to a fund in the hands of the receiver of the court, and ordered the distribution of the fund among them. It was held that this did not preclude third parties from proceeding, by proper legal application, to assert their claims to share in the fund before its distribution, and it was even held that they were entitled to an injunction from the court to prevent such distribution before their claims could be considered and determined, upon presenting a *prima facie* case. Howard *ex parte*, 9 Wall. Supreme Court Rep., page 175. The opinion

of this court may be found on pages 182 to 187, and it is unusually clear, cogent and satisfactory.

Upon the *merits* of Louisa Taylor's claim to the values of both her $50 and her $150 annuity, and upon her right to the particular relief which the Circuit Court, sitting in equity, gave her by the decrees of November Term, 1879, we have already said all that we desire. There is no dispute between her and the appellants as to the *amount* of her claims, the manner of ascertaining the value of her annuities, &c. Leaving out of consideration the defence of the statute of limitations, the only objections pressed against the allowance of her claims are: 1st. That she ought to be allowed them *only* against the estate and effects of Thos. P. Devereux, a bankrupt, and *to share* ratably and *pari passu* with his general creditors therein; and she ought not to have them paid in full out of the fund of $21,527.67 charged on the Pollock lands, and constituting part of Frances Devereux's unconsumed assets; and 2d. That her manner of preferring her claim in the Circuit Court, sitting in equity, by *intervening petition*, was *irregular*.

We have already endeavored to show to the court why Louisa Taylor is entitled to satisfaction in the manner in which the Circuit Court decreed it—as to any *irregularity* in the proceedings by intervening petition, &c.—irregularity is not, *necessarily*, nor even *usually*, *error*. But we are unable to see the irregularities complained of, and certainly the appellants have not aided us by pointing them out.

In as few words as possible, let us follow the history of this cause, so as to ascertain what there was of *irregularity* in the manner of *preferring* Louisa Taylor's claim, and having it allowed and paid in the manner directed by the Circuit Court:

Frances Devereux died June 3d, 1849, Whiting was appointed administrator *pendente lite* by the Probate Court of Wake County in August, 1849, when Cook, one of the executors named in the will, presented it for probate. There was a *caveat* then entered to the will, by some of the heirs-at-law

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and next of kin of said Frances, and the controversy respecting its probate continued until November Term, 1852, of the Wake County Probate Court, at which term this will was, at last—more than three years after the death of the testatrix—admitted to probate, and Whiting was then and there appointed administrator with the will annexed. The said Frances' estate and effects consisted of more than sixty negro slaves; a fund of $21,527.67 charged upon the Pollock lands, conveyed to T. P. Devereux by the deed of July 3d, 1839, which said Frances, by her will, appointed to her executors, for the payment of her pecuniary legacies; a house and lot in Chapel Hill, and some scattering effects of trifling value.

During the period of the contest respecting the will, no part of the fund of $21,527.67 was raised by any one out of the Pollock lands. The slaves for the most part remained at the plantation in Bertie, which had been cultivated jointly by said Frances and her grandson, John Devereux, the son of T. P. Devereux, until the 13th October, 1852. None of them went into Whiting's possession. They are all found in the possession of T. P. Devereux on 7th October, 1852, when he made a division of the same between himself and Frances Ann Polk, and on the 13th of October, 1852, he conveyed the share which he had allotted to said Frances Ann, to one Duncan, in trust for her as a *feme* sole.

From Whiting's two accounts, which were rendered to Devereux, and were never returned to the Probate Court, it appears that he sometimes hired out Tom and Viny, who were specifically bequeathed to the Presbyterian Church, and Delia and Sally, who were to be sold or otherwise disposed of, under specific directions set out in the will of the testatrix; but the main body of slaves, under directions contained in the will, remained in the possession of John Devereux (the son of T. P. Devereux), on the plantation in Bertie, and completed the crop for 1849, growing at Mrs. Devereux's death (Exhibits W and K, record, pages 92 and 93); and the next knowledge we have of them, fifty-four of them are at T. P.

Devereux's plantation on the Roanoke, and three of them are at his residence in the city of Raleigh (Unlettered Exhibit with first amended answer, record, pages 107 and 108); and Devereux divides them between himself and Bishop Polk, on the 7th day of October, 1852 (record, pages 107 and 108); and on the 13th of October, 1852, conveys Bishop Polk's share to Lucius C. Duncan as trustee for Mrs. Polk (Exhibit O, record, pages 101 to 103), having already, on the 19th of July, 1852, taken assignments from said Polk and John Devereux of all their interest in said negro slaves (Exhibits Q and P, record, pages 100 and 101). It is to be observed that all these dealings with said Frances' assets, until the final disposition of them as hereinbefore stated, were while Whiting was nominally her administrator *pendente lite*, and before he was appointed her administrator with the will annexed.

On the 29th August, 1851, the said Devereux took an assignment from the Presbyterian Church of Raleigh, of the slaves Tom, Viny, Priscilla and her three children George, Henry and Robert (Exhibit N, record, pp. 99 and 100), the negro slaves specifically bequeathed to that congregation by item 11th of said Frances' will (record, page 51). The slave woman Evilina, practically emancipated by item 14th of the will, was taken into said Devereux's possession and left in Philadelphia, Pa., to effectuate that purpose during the same period of time preceding Whiting's appointment as administrator with the will annexed (original answer, record, page 68. Also, record, pp. 21 and 22). The defendant T. P. Devereux did not, in his original answer, make a full disclosure as to the division of the negroes between himself and Frances Ann Polk (it was excepted to for this reason, among others) in his amendments to his answer, replying to said exceptions (record, pages 106 and 107), he discovers that transaction, and avers that the appointment of Whiting as administrator with the will annexed, in November, 1852, was only formal, "for the completion of said division by the sale "of two negro slaves," * * "and that not a single debt

"of the said Frances remained unpaid at the date of the let-
"ters of administration with the will annexed" (record, pages 106 and 107). And one of the two negro slaves spoken of was purchased by Whiting himself (it is to be presumed not from himself, but from T. P. Devereux), and Whiting rendering an account to Devereux for the proceeds arising from said sales (Exhibits W and K, record, pages 92 and 93), or stating plainly the actual transaction, Devereux gave Whiting the slave woman for services rendered to him in winding up Frances Devereux's estate.

The defendant (T. P. Devereux) frankly admits in his amended answer, that not a debt of the testatrix remained unpaid when Whiting was appointed administrator with the will annexed—he might with equal truth have added, that out of the assets of said Frances he had also discharged all her legacies; for in his answer (record, pages 67 and 68) he *discovers* how, during the same period, he had purchased in four of said legacies (Exhibits V, U, T, S, record, pages 94 to 97), and had covenanted with the said Whiting to save him harmless against the claim of the Union Theological Seminary, the legacy to which he had then purchased, but did not obtain a release for until 1858. (Answer, record, page 68; Exhibit R, record, page 98).

Under the state of facts disclosed by this record, a court of equity regards T. P. Devereux as executor of Frances Devereux, as having accepted his office as such executor, and will compel him to account with the parties interested in the assets. The authorities to this effect are express and numerous: (1 Williams on Exrs., 227, 228; 2 *ibid.*, 1,555; *Doyle* v. *Blake*, 2 Sch. & Lef., 230; *Rogers* v. *Frank*, 1 Yon. & Jer., 409; *Parsons* v. *Moysden*, 1 Freem., 151; *Read* v. *Truelove*, 1 Ambl., 517; *Mitchell* v. *Adams* (citing *Doyle* v. *Blake* with approval), 1 Ired., 298).

The appellees, Elizabeth and Georgiana, conceiving that upon this state of facts they might file an original bill in equity against T. P. Devereux for a final account of Frances

Devereux's personal assets, including the $21,527.67 charged on the Pollock lands, which, by her will, she had appointed to her executors for the payment of her pecuniary legacies, treating him *quod hoc.* as executor, and might so obtain their distributive share of the undisposed of residue, filed their bill in equity in this case.

Whiting died before this bill was filed; it was objected by the defendant (T. P. Devereux), both by demurrer and his answer, that the suit was defectively constituted, because Whiting, being dead, could not be made a party defendant, and it was necessary to have another administrator of Frances Devereux, with the will annexed, appointed in his stead, so that her personal representative might be a party to this suit. *We* have insisted that T. P. Devereux was to be taken as her personal representative for all purposes—and especially in a suit in equity. But if in this view we are mistaken, this defect in the original constitution of the suit has been cured during its progress, since T. P. Devereux died, for the defendant R. C. Badger has been appointed administrator of Frances Devereux *de bonis non*, with the will annexed, and has been made a party defendant. (Record, pages 120 to 122).

The order of events was as follows:

Before his death, T. P. Devereux became bankrupt; his bankruptcy was suggested, and Wm. J. Hawkins and Geo. W. Mordecai, his assignees, by proper proceedings, were made parties defendant. (Record, pages 118–119).

T. P. Devereux died; his death was suggested, and, by proper proceedings, the suit was revived against R. C. Badger, administrator *de bonis non, cum testatamento annexo* of Frances Devereux, deceased, who was made party defendant. (Record, pages 120–123).

Geo. W. Mordecai died, and Walter Clark became assignee in bankruptcy in his stead, and was, by proper proceedings, made a party defendant (record, page 126); and afterwards, the said Walter Clark and John Devereux, as substituted trustees for Thomas P. Devereux, deceased, in the deed of

July 3d, 1859, conveying land, were, upon their own application, made parties defendant (record, page 190), and finally it was, by consent, ordered, that the cause should proceed, without making the executor of Thomas P. Devereux, deceased, a party defendant, he having died entirely insolvent, without any estate or property, real or personal, the plaintiffs waiving all claim against the said executor. (Record, page 190).

In the meanwhile, T. P. Devereux had paid both of Louisa Taylor's annuities of $50 and $150, the first from Frances Devereux's decease, in 1849, and the other from the time it became due and payable up to the year 1867. After he was adjudicated a bankrupt, in 1868, the said Louisa, on the 26th of March, 1869, duly proved for the value of her said annuities, as a debt, with security, against the bankrupt's estate and effects, in the proceedings in bankruptcy in the District Court of the United States for the North Carolina District, sitting as a court of bankruptcy.

But after the Supreme Court of the United States, at October Term, 1878, decided in this cause, that Frances Devereux, by her will, had appointed the $21,527.67 charged on the Pollock lands, for her benefit, to her executors for the payment of her pecuniary legacies, it appeared, that the appellees' suit had become one brought against R. C. Badger, administrator *de bonis non* of Frances Devereux, with her will annexed, and the trustees and assignees in bankruptcy of T. P. Devereux, holding the Pollock lands conveyed to said T. P. D. by the deed of July 3d, 1833, or their proceeds, by certain of the next of kin of said Frances, to have their share of the undisposed of residue of said Frances' estate and effects, made good to them, and satisfied and paid, out of the fund of $21,527,67, with the accumulated interest thereon since June 3d, 1849, which said Frances had appointed to her executors by her will.

Now, it is, that Louisa Taylor makes herself party to the cause, so constituted, by intervening petition—what great

irregularity was there in such a proceeding? It seems clear, that Louisa Taylor, being a legatee claiming pecuniary legacies, given by the will of said Frances, her interest was protected and represented by R. C. Badger, the administrator with the will annexed. (*Calvert on Parties*, page 20, also, pages 171–172; *Law Lib., vol.* 1). And it was not absolutely necessary for her to intervene, since it was the duty of the administrator *de bonis non, c. t. a.*, to see that her legacies were provided for, before any part of the appointed fund was paid toward satisfying the claims of the appellants, Elizabeth and Georgiana, whose only right, was, as next of kin to an undisposed of residue, and the event has proved, that there is enough of the appointed fund to satisfy the claims of both the legatees, and the distributees who are appellants, while all other claims upon the assets have been satisfied and discharged. But it is not seen how *any harm is done to any one* by allowing the legatee, Louisa, to come in under her intervening petition and litigate her own rights in the premises, especially since, thereby, another suit is probably prevented between the administrator *d. b. n., c. t. a.* and the legatee, and moreover, instead of the administrator *d. b. n.* collecting the *whole fund* from the trustees and assignees in bankruptcy, and then paying part of it back to them—by means of the intervention of the said Louisa in this suit by petition, only so much will be collected from the trustees and assignees in bankruptcy, as is needed to satisfy the claims of the said Louisa and of the appellees, Elizabeth and Georgiana, and will be paid *directly* to them, leaving the residue of the fund in the hands of said assignees and trustees, who are entitled to have it for the general creditors of Thomas P. Devereux. What possible harm can it do to the appellants, who are trustees and assignees in bankruptcy of the estate and effects of T. P. Devereux, a bankrupt, that Louisa Taylor has been permitted to assert her claim for her annuities by an intervening petition, in this pending suit? If it be an *irregularity*, which we deny, why should the appel-

lants object to a bare *irregularity*, and subject the next of kin who have been waiting for their share of their ancestor's estate ever since 1849, to the several years additional delay involved in every appeal to this court.

But we deny that the petition and the proceedings thereunder were "irregular"; *unusual*, it may have been, but not irregular. On the contrary, a "petition in the cause" is a proceeding well known in equity practice, and is the very course prescribed whenever a person "who is not a party" intervenes for the protection of some interest which he desires to guard either before the court or before the master. (Daniel's Ch. Prac., vol. 3, ch. xxxiv, sec. 3, p. 1801).

But, say the appellants, "Louisa N. Taylor was allowed to "come into the case by petition, in which she claimed annui- "ties, &c., &c., after the mandate of this court was filed, and "before the last decree, and the court heard her case upon the "petition, and decreed relief in her favor, &c. (See her "petition on page 199 of transcript)."

"It is insisted that this was, to say the least, a very irregu- "lar proceeding." *Appellants' brief* (7), page 21.

And then add: "The petitioner might have brought her "separate suit; or she might, perhaps, before the case was "heard, have been made a party in some way, and the bill "might have been amended. She came too late to be heard "in this cause. The acceptance of service of the petition "* * * was not an agreement to waive all exceptions to "such a method of procedure." (Appellants' brief, page 21).

Referring to *Record, page* 201, we find that the petition was endorsed by the counsel and attorneys for the appellants: "SERVICE ACCEPTED, AND WE AGREE IT MAY BE HEARD, "IF PRACTICABLE, AT JUNE TERM, 1879."

Consent cannot give jurisdiction, but it is certain CONSENT CURES IRREGULARITIES; nay, the general principle is, that even a failure to take advantage of an irregularity at the earliest moment, and to object thereto, is a WAIVER which cures it. An agreement that the petition "might be heard at

"June Term, 1879, if practicable," was a waiver of all bare irregularities in the process, &c. No such objection as that now made appears on the record in the inferior court. We think it is certain this court will not allow a bare irregularity in the form of procedure to be assigned as error here for the first time. It is an afterthought of the appellants. If there is irregularity in the proceeding, upon which the opposing party intends to rely for his defence, he must take his stand upon it early, while it may yet be cured. *Knox* v. *Summers*, 3 Cr., 96; *Pollard* v. *Dwight*, 4 Cr., 421; *Taylor* v. *Longworth*, 14 Pet., 172; *Irvine* v. *Lowry*, 14 Pet., 293; *Gracie* v. *Palmer*, 8 Wheat., 699, *Clawson* v. *Wolf*, 77 N. C. R., 100; *Kidder* v. *McIlhenny*, 81 N. C. R., 123.

The faint interposition of the statute of limitations as a defence cannot help the appellants much more than their reliance on irregularities. (*Appellants' brief* (10), *page* 23). Louisa Taylor's annuities were regularly paid, one or both of them, from 1849 till 1867, when T. P. Devereux becoming insolvent, his bankruptcy intervened. In March, 1869, she proved her claim in bankruptcy, and has been in hot pursuit of her annuities ever since. When did the statute begin to run against her? What length of time is a bar in cases of this character? When does the statute begin to run against an annuitant, whose annual stipend is to be paid by one to whom a fund has been given "in trust" for its payment? It would have been well if the appellants had answered these inquiries in their brief. We do not believe they seriously rely on this defence; and we do not consider it necessary to add one word on this point to what is said in the brief filed specially in support of Louisa Taylor's claim.

So, also, there is an apparent lack of seriousness in the appellants' position, that "the Circuit Court decreed that the "$50 annuity to Louisa N. Taylor (see decree on pages 206, "207 of transcript) was a first lien upon *the assets of Thos.* "*P. Devereux, in the hands of the defendants.*" (Appellants' brief, page 21).

"If it be granted (as it is not) that this annuity might be "a lien upon the *Pollock lands*, or the proceeds thereof, it does "not appear as a fact ascertained, nor does it appear in the "evidence, or in any way in the record, that the assets in the "hands of the defendants were the proceeds, or any part "thereof, of the Pollock lands. So far as it appears, these "assets were the general assets belonging to the estate of Thos. "P. Devereux, arising from no particular source. Mr. Deve- "reux had been a man of large wealth, and his personal "property, his income, his cash, came from a multiplicity of "sources. At all events, it does not appear in the record, "that this fund in question was of, or grew out of, the *Pol-* "*lock lands*. It could hardly be contended that this annuity "was a first lien on the *general personal assets of Thomas P.* "*Devereux*." (Appellants' brief, pages 21, 22).

And again, in another part of the brief, counsel for the appellants say, speaking of the decree of the Circuit Court at November Term, 1879: "The Circuit Court * * * did "declare and decree a resulting trust in favor of the *feme* "plaintiffs for one-third of the legacy of $7,200 bequeathed "to Thos. P. Devereux by the will of Frances Devereux, and "that this one-third of said fund and an annuity of $50 in "favor of Louisa N. Taylor, 'are first liens upon the lands of "the said Thomas P. Devereux, or the proceeds thereof, in "hands of the defendants, in the relative order in which said "claims are last herein stated, and are to be first paid in full "by the defendants *with* and *out of* the proceeds of said lands.'" (Appellants' brief, pages 16 and 17).

The intent of the appellants' counsel is, first, to so interpret, or rather mis-interpret, the decree of the Circuit Court at

November Term, 1879, as to make it determine a first lien in favor of the appellants, Elizabeth and Georgiana, and Louisa Taylor, for their claims respectively, on the whole of Thomas P. Devereux's estate and effects, real and personal and mixed, in the hands of his trustees and assignees in bankruptcy, and then, to assign it for error, that the Circuit Court has declared their claims a first lien, not on the Pollock lands in the hands of the said trustees and assignees, or on the $21,527.67 charged on said Pollock lands by the deed of July 3d, 1839, but on all said Thomas' estate, property and effects in the hands of said trustees and assignees. Now, it is perfectly certain, if such a thing was done by the Circuit Court, they did not intend to do it, it was a bare clerical mistake in drafting the decree, not an error of the Circuit Court in making its decision; a mistake, which if it existed, and had been pointed out by the appellants' counsel when the decree was drafted, would at once, then and there have been corrected by the Circuit Court, and they need never to have undergone the delay and expense of an appeal to this court to have corrected this. It is not such an error as can be relied on, when pointed out for the first time after appeal, on the argument in this court.

We have never claimed, and do not now claim, for the appellees, Elizabeth and Georgiana, or for Louisa Taylor, any lien on Thomas P. Devereux's general estate and effects in the hands of trustees and assignees in bankruptcy, which will give them a preference over the other creditors of the said Thomas.

And we think it is equally certain, that no one can read the whole decree with the honest intent to arrive at its real meaning, and find in it, what the appellants attempt to put there, by selecting isolated passages from different parts of the decree, and interpreting and construing them apart from the contest, apart from the language in other parts of the decree, which limits and qualifies the meaning and effect of the passages selected.

We shall not consume the time and abuse the patience of the court, by a labored criticism, of all the language of the whole decree, to demonstrate that it does not establish for the appellees, Elizabeth and Georgiana, and Louisa Taylor, a first lien for their claims on the general assets, real and personal and mixed, of Thos. P. Devereux, in the hands of his trustees and assignees in bankruptcy, giving them a preference over all the other creditors of said Thomas. It is only necessary to refer the court to the decree itself, to be found on pages 204 to 208 of the printed record, inclusive, and to call attention to the fact that it closes by giving to each of the appellees, Elizabeth and Georgiana, and to Louisa Taylor, for each of their several claims, something in the nature of a judgment at law for so much money, against the appellants as trustees and assignees, &c., "to be paid and satisfied out of "the proceeds of the sales of the said *Pollock lands*, in their "hands respectively," &c., &c.

An attempt on our part to compel the assignees and trustees to pay the appellees their decree out of any other fund than the "proceeds of the sales of the Pollock lands," conveyed to T. P. Devereux by the deed of July 3d, 1839, and assigned to them by T. P. Devereux after he was adjudicated a bankrupt, would certainly demonstrate that the appellees have obtained for their security no decree giving them a right to preferred payment out of the general estate and effects of Thos. P. Devereux in the hands of his trustees and assignees in bankruptcy.

In the remarks of the counsel for the appellants in this connection, on pages 21 and 23 of their brief, they speak of some "assets in the hands of the defendants," and predicate with respect to them, "that it does not appear as a fact ascertained, nor does it appear in the evidence, nor in any way in the record," that "they were the proceeds or any part thereof, of the Pollock lands." And this is true enough, but we invite the opposing counsel's attention to the fact, that it does not even appear "as a fact ascertained, nor does it appear

from the evidence, nor in any way in the record," that there are any "assets in the hands of the defendants." It *does* appear that the defendants, Hawkins and Clark, are assignees in bankruptcy of T. P. Devereux, and that the said Clark and John Devereux are trustees substituted for T. P. Devereux since his decease, under the deed of July 3d, 1839, to subserve the trusts therein declared; and that the two former, "by leave of the Court of Bankruptcy, came into this (the "circuit) court, and, by consent of all the parties, made them-"selves parties defendant" (record, pages 119 and 126); and the two latter, "claiming to be substituted trustees, jointly for "Thos. P. Devereux, since his decease, in the deed of July "3d, 1839, mentioned in the pleadings, conveying the lands "which had descended to Mrs. Frances Devereux from her "brother, George Pollock, deceased, to the said Thos. P. "Devereux, came into court here (the Circuit Court at Raleigh, "N. C.) and applied to be made parties defendant in this "cause, to litigate and protect their rights in the premises, "and thereupon, by consent of all the parties, plaintiff and "defendant, the said Walter Clark and John Devereux, as "such first substituted trustees, are now and here made par-"ties defendant in this cause, and are allowed herein to liti-"gate and defend their rights in the premises." (Record, page 190). Therefore, as it is eminently probable that T. P. Devereux had some property when he was adjudicated a bankrupt, there is something more than a probability, that the appellants, who are his assignees in bankruptcy, have some assets in their hands; and there is the same probability that among these assets are the Pollock lands, or the beneficial interest which was in T. P. Devereux when he was adjudicated a bankrupt, in the Pollock lands, conveyed to him by the deed of July 3d, 1839, or the proceeds of the lands, or of T. P. Devereux's beneficial interest in them. And as to the appellants, who are substituted trustees, as they came into this court claiming to be trustees jointly substituted for T. P. Devereux since his decease, in the deed of July 3d, 1839, conveying the lands

which had descended to Frances Devereux from her brother, George Pollock, and, upon their own application, by consent of all the parties, were made parties defendant in this cause to litigate and protect their rights in the premises, there is an absolute certainty that there are assets in their hands, and that any assets in their hands as substituted trustees, are either the said Pollock lands or the proceeds thereof.

Perhaps some explanation of this matter is due from counsel to the court. The appellees have always kept before the court as defendants a personal representative of Frances Devereux, against whom they might establish the amount of their claim, and the person in whom was the legal title to the Pollock lands conveyed by the deed of 1839, because out of the proceeds of this land they counted upon obtaining payment of their claim. Consequently, when Thomas P. Devereux became bankrupt, in May, 1868, his assignees were, shortly after, at November Term, 1868, of the Circuit Court, made defendants. We thought then, and think now, that the deed of July 3d, 1839, conveyed a fee simple estate to Thos. P. Devereux, subject to certain charges and trusts, and that by his assignment in bankruptcy the fee simple passed to his assignees, subject to the same charges and trusts, or such of them as had not been discharged or performed; notwithstanding, in the 7th clause of the deed, it is provided, that the said Thomas, his heirs and assigns, should hold all the land thereby conveyed "to the uses, trusts and purposes "following, that is to say: Upon trust for his own use and "benefit during his natural life, and no longer, and, from and "after his death, upon trust for the payment and satisfaction, "and to stand charged with the payment and satisfaction of "all and every the just debts which the said Thomas may "owe at the time of his death, and subject thereto upon trust "for any one or more of the children (born or to be born) of "the said Thomas, their wives or husbands, for such estates, "upon such trusts, to such uses, and subject to such charges, "conditions and restrictions as he, the said Thomas, shall, by

"deed or will, direct, limit and appoint; and should the said "Thomas make an appointment to or in favor of more than "one of his children, sons-in-law or daughters-in-law, it is "hereby declared that they shall take in such proportions in "all respects as he shall declare, and that no disproportion of "value shall be deemed or taken (however great such dispro- "portion may be) to make the said appointment illusory, or "in any manner to defeat the same, but that his power shall "be absolute and without restriction to appoint the whole to "one in exclusion of the residue, to some in exclusion of the "residue, or to all—and if to more than one or to all, then "with such difference as he may please to make between "them, though to some he should appoint a mere nominal "portion or value—and in default or for want of any such "appointment, then upon trust for the children of the said "Thomas, who shall survive him, and their heirs, share and "share alike, in fee simple; and should any child of the said "Thomas die during the life of the said Thomas, leaving "issue which shall survive the said Thomas, such issue shall "stand in the place of such child, and take the portion or "share that would by such child have been taken upon his or "her surviving the said Thomas. And it is further declared, "that the issue of any child of the said Thomas shall (after "the death of such child) be deemed and taken to all intents "and purposes to be within the power of appointment above "given to the said Thomas." (*Vide* Exhibit A, with amended bill, record, pages 46 and 47).

We incline to the opinion, notwithstanding this unusual limitation, that the lands, which, it will be observed, consist of very numerous and very large tracts in various counties of North Carolina, were so vested in Thomas P. Devereux that they, upon his assignment in bankruptcy, passed to his assignees.

But when Thomas P. Devereux, after being bankrupt, and making his assignment, died, question was made, T. P. Devereux's life estate then having expired, whether his assignees

in bankruptcy could sell and make title to these lands. Upon this doubt proper proceedings were had in the State Courts and by virtue of a statute of North Carolina whereby it was enacted: "That where any trustee of a deed of trust has "died * * * or in any way become incompetent to exe- "cute the said trust, that the Judge of Probate of the county "wherein the said deed of trust was executed be authorized "and empowered to appoint some discreet and competent "person to act as trustee, and execute the said deed of trust "according to its true intent and meaning, and as fully as if "appointed by the parties to the deed." (Acts of General Assembly, 1869-'70, ch. 188, sec. 1. Battle's Revisal, ch. 35, sec. 33, page 359). Walter Clark and John Devereux were substituted as trustees under the deed of July 3d, 1839, to subserve the trusts therein declared for the benefit of the creditors of Thomas P. Devereux, deceased. Thus, it was considered, that either these substituted trustees, or the assignees in bankruptcy, or both, were certainly vested with both the legal and beneficial estate in the Pollock lands, conveyed by said deed of July 3d, 1839, subject to the uses and trusts and charges, upon which they had been held by said Thomas while living. The substituted trustees then came into the Circuit Court of United States and they also applied to be made, and were allowed to become parties defendant in this cause, to litigate and protect their rights in said Pollock lands, all parties, plaintiff and defendant, consenting thereto. (*Proceedings at June Term*, 1874, record, page 190). After all this, the allegation is hardly true, "that it does not appear "as a fact ascertained, nor does it appear in the evidence, "*or in any way in the record*," that the assets in the hands of the defendants were the proceeds, or "any part thereof, of the "Pollock lands." (Appellants' brief, pages 21–22). It does not appear *in the record* whether the Pollock lands have or have not been *sold;* but it does most certainly appear, that the defendants either as assignees in bankruptcy of Thomas P. Devereux, or as substituted trustees under the deed of July

3d, 1839, have or ought to have in their hands, the Pollock lands or their proceeds; and that they have been made, and have made themselves, parties to this cause, to ascertain what disposition they must make of these lands or their proceeds; whether they are or are not liable to satisfy the claims of the appellees, Elizabeth and Georgiana, and of Louisa Taylor in the first place, or if they must be applied to the payment of Thomas P. Devereux's own personal debts and obligations, without first satisfying Frances Devereux's undisposed of balance of $21,527.67, or so much of said charge as is needed to pay her unsatisfied legatees and next of kin.

There is no difficulty in the case, about obeying the decree. If the appellants have not sold the Pollock land aforesaid, they must, under the decree, proceed to sell them and apply the proceeds to the payment of the appellees' claims in the order provided in the decree. If they have sold the lands, they must in like order apply the proceeds into which they have been converted.

The last points made by the appellants in their brief is, that the Circuit Court ought to have "considered and sus-"tained or overruled the exception to account D mentioned in "the 'agreement of counsel,' set forth on page 202 of the "transcript." (Appellants' brief, page 23).

Why do the appellants *assume* that the Circuit Court did not *consider* the exception to Account D spoken of. It is quite evident on reading the decree, that this exception was *considered and overruled*, and, as we respectfully submit, most properly overruled.

The appellants then undertake to show from the *evidence* in the case, that Thomas P. Devereux did not convert the fifty-seven slaves to his own use. That he did not, "in his "life-time sell the negroes," nor "take possession of them," but that "they were divided"! not that *he* divided them,

between himself and Frances Ann Polk. And the counsel evidently mean to assert that they were equally divided.

T. P. Devereux might have converted the negroes to his own use without selling them, as appears by the case of *Hagler* v. *McCombs*, 66 N. C. Rep., page 345. But did not he take them into his possession? Frances Devereux died June 3d, 1849. The negroes were divided on the 7th of October, 1852, and conveyed to Frances Ann Polk's trustee, Duncan, on the 13th of October, 1852—more than three years and four months after Frances Devereux's death. Where were the slaves during this period? Evidently in the possession or under the control of Thos. P. Devereux, most of them hired out by him, and the hire of them accounted for in Account D, as will be seen on an examination of the details and items of that account. When Frances Devereux died, they were on her plantation in Bertie county. When Thos. P. Devereux produced them for division, three years and four months afterwards, fifty-four of them were in his possession in Halifax county, three of them at his residence in Wake county, at Raleigh. (Record, pages 106, 108). But as to who divided the negroes—who directed, caused and controlled the division—as well as had the negroes present for that purpose? Why, Thomas P. Devereux, in his sworn amendments to his sworn answer, says he did it. This is his language:

"This defendant saith that according to the recollection of "this defendant, upon a visit of the defendant, the Right "Reverend Leonidas Polk, with his wife, to the city of "Raleigh, at the date of the said valuation and division, this "defendant stated to them the object and intention of this "defendant, in his whole conduct in respect to the estate of "the testatrix, Frances, and *expressed his willingness*, as the "estate was then for the purposes of this defendant substan- "tially closed, *to divide the negroes* between this defendant and "the said Frances. This defendant recollects the observation "of the said Frances, that, as the arrangement amounted to a

"gift from this defendant to her, she and her husband could "not object to anything this defendant might wish to do."

"He expressed his willingness to divide the negroes "between this defendant and the said Frances." And he had controlled the slaves for more than three (3) years previously, and they were then in his possession.

The whole of T. P. Devereux's main answer consists of an argument to show why *he* divided them, or rather gave a part of them to Frances Ann Polk—for there was never an *equal* division, as we have already hereinbefore shown. (*Vide* pages 54, 55, *supra*).

Thomas P. Devereux says for himself, in his principal answer, that his mother, Frances, agreed with his father, John, not to expect, and to be content not to receive, any of John's estate and property when he should come to die, if John, on his part, would agree to and concur in and would execute the deeds of July 3d, 1839; whereby she had the right to appoint $50,000 charged on the Pollock lands exactly as she wished and as a *feme sole;* that accordingly, the settlement of July 3d, 1839, was made, and afterwards John died, and made no provision for his wife Frances in his will; that, thereupon, she, not regarding her aforesaid promise and undertaking, entered her dissent from her husband's will, as she might lawfully do under the laws of North Carolina, and obtained her dower in John's lands, and a full child's share of his personal effects, including his slaves; that by such action of Frances, provisions made in John's (the husband) will, as well for his son, the said Thomas, as for his daughter Frances Ann Polk, in slaves and other property, were disappointed, and passing by his own losses, the said Frances Ann was deprived of part of her father's legacy to her. This, Thos. P. Devereux says, he regarded as a wrong and a hardship, and he went to work, under his mother's will, to try and set it right. First, he construed and interpreted her will for himself, and decided it did not appoint the $21,527.67 still charged on his lands for his mother's benefit. Then he pur-

chased in all the rights of legatees under the will, and paid her debts and funeral and testamentary expenses; and then, as the will gave him a legacy of $7,500 in trust, and he had purchased up or satisfied all the other legacies, there was about property enough left to pay him, and he took it into his possession and claimed it as his own. Then, he says, having, in fact, with one exception, "done everything which "this defendant thought was obligatory on him, in the view "he took of conscientious obligations, this defendant thought "he might safely begin to indemnify his sister, the defendant "Frances Ann, against the consequences of their mother's "dissent from the will of her husband, their father." (*Defendant T. P. Devereux's answer*, record, pages 60–68). He thought that "he might safely begin to indemnify his sister "Frances Ann." And he adds that he conveyed to Duncan, as her trustee, for her separate use, by deed on the 13th of October, 1852, one-half the negroes late the property of Frances Ann. But he adds, not exactly one-half of the negroes did he give to his sister—that he had also lost by his mother's dissent from his father's will, about twice as much as his sister had in proportion to their respective legacies from their father; but that Bishop Polk had then recently sustained a heavy loss by cholera among his negro slaves, and he "felt" it to be proper not to weigh minutely the respective proportions of the said slaves to be assigned to her and himself, and he tells us, moreover, that, in setting apart his sister's share, he was indemnified against a debt due him by her husband, which he believed was a proper charge on her separate estate (defendant T. P. Devereux's answer, record, pages 68–69; Exhibit O, with answer—deed to Duncan, record, 101–102), which debt, it appears from the papers, was her husband's note for $3,248.38. (Record, page 108).

Thus, Frances Ann did not get *half* the negroes, at last; but Thomas P. Devereux having the negroes in his possession and under his control, and having had them in his possesion and under his control, more than (3) three years and (4) four

months, retained a lion's share of them for himself, and claimed and exercised the right to sell, convey, transfer, and deliver the other share of them to his sister's trustee.

Would Thomas P. Devereux *give*, and convey by deed, to his sister property that was not his—property that he did not *claim* to be his? It is difficult to conceive a plainer, clearer case of making chattels his own, if by his own act he could make them his own—of converting them to his own use. For further light on this transaction (*vide*, also, amendments to Thomas P. Devereux's answer, with exhibits accompanying it. Record, pages 106, 107 and 108). It is, in these amendments, already quoted, that both he and his sister allege that they regarded the arrangement between them as "amounting to a *gift* from him to her, and that *she and her husband could not object to anything* he might wish to do." We also invite attention to what has been said by us on this subject in this argument. (*Ante*, pages 19 and 20—54 and 55).

It is while commenting upon a record disclosing these facts that the learned counsel for the appellants say: "It is diffi-"cult to see upon what grounds or principles of justice the "plaintiffs can assert that the assets of Thomas P. Devereux "shall be charged with the value of *all* the slaves." (Appellant' brief, page 24). Yet it is a well-settled principle in law, if one having a chattel *in his possession, sells it* to another—while there is no warranty of *quality* implied from selling, yet the bare act of being in possession and selling, amounts to a warranty of title. In other words, the law says: If one being in possession of a chattel, transfers it, by sale, to another, he thereby agrees with the buyer that the chattel is his own, and he has the right to use it. 1 Parsons on Contracts, 574, 575, note (e); *Andres* v. *Lee*, 1 Dev. and Bat. Eq., page 38; *Sparks* v. *Merrick*, 65 N. C. Rep., 440; Brom's Legal Maxims, 767. We do not pretend that having a chattel in possession and transferring it by gift, raised an implied warranty of ownership, but it is the very strongest evidence that the dower asserts ownership. (Sec. 5, pages 19, 20, *supra*).

This question was, however, settled against the appellants by the decree of the Circuit Court in 1874, affirmed, in this respect, by the Supreme Court in 1878, by the very language of the decree quoted in the appellants' brief, at page 24 thereof. That decree decides (record, page 191) that T. P. Devereux must account for such part of Frances Devereux's personal property "as came to the hands of the said Thomas after the decease of said Frances." Shall T. P. Devereux account for all her assets, as the plaintiffs claim? No, says the court; not for all, but for such part as *came to the hands* of the said Thomas, *including the negro slaves divided* between Thomas P. Devereux and Bishop Polk, in October, 1852; not the slaves *allotted* to T. P. Devereux, or those *allotted* to Frances Ann Polk, but the slaves "*divided*" between them—in other words, *all* the slaves. The only *possible* purpose for which the clause "including the negro slaves *divided*, &c., in October, 1852," could have been added, was to prevent any question in future being made on that point. If only the part of those slaves retained by T. P. Devereux had been intended, certainly the decree would have said as much as thus: "including the negro "slaves *allotted* said Thomas in the division with Bishop Polk "in October, 1852." The meaning of the language used—keeping in view the distinction intended, which was between the assets of Frances, which *had*, and those which *had not* come to the hands of Thomas P. Devereux—is too plain to leave much room for doubt or perversion.

But that was not the part of the decree on which the appellees relied, in their stipulation with the appellants, as *barring* them (record, page 203); but the subsequent part of the decree wherein, after the principles regulating the accounting had *been determined by the court, the parties* fix, *by agreement* between them, *entered of record* the *amount* of assets with which T. P. Devereux must be charged (record, page 193, *at the top*), fixing it at the sum of $41,633, derived from the master's Accounts D, F and G (record, pages 141, 145), which sum, an examination of these accounts shows, includes

all the slaves. (*Vide* Account D, page 143). See, also, the remarks made on this subject, *ante* at (5), pages 19 and 20 of this argument; also pages 54 and 55.

That part of the decree quoted by the appellants in their brief, decides this question; both citations from the decree are in exact accord, because it was in consequence of the decision made by the court that the parties entered into the agreement, and the agreement was, and was intended to be, the exact sequence of the decision.

Account D regulates the whole matter. This purports to be an account of "the amounts received by Thomas P. Devereux as executor of Mrs. Frances Devereux," with interest calculated thereon to 31st May, 1868, when T. P. Devereux became bankrupt. And among the items of Account D is the value of all the negro slaves divided between Thomas P. Devereux and Duncan, as trustee for Frances Ann (record, page 143), found to be $19,991, with interest from October 13th, 1882, to May 31st, 1868, found to be $18,642.14.

The assessors who made the partition, reserved two (2) of the slaves to be sold and their proceeds divided, viz.: Delia and Sallie; these are not included in the enumeration aforesaid, but the next two items charged in account D, are the prices of the two slaves sold, viz.: Delia sold for $650, and Sallie for $500, with interest calculated on both items. And an examination of the action of the assessors will show, that there was, also, provision for dividing the proceeds of the slaves *who were sold*, between T. P. Devereux and the said Frances Ann, and that they *were* divided accordingly. Yet T. P. Devereux is charged, in Account D, with the whole value of both, and the interest thereon to May 31st, 1868, and Account D is made the standard of correctness by the agreement between the parties in this decree.

The $1,150 derived from the sale of Delia and Sallie, was first used, to pay $418.88 more to T. P. Devereux, then $575 *more* of this fund was paid to T. P. Devereux, the residue thereof, only $156.12, was paid to Frances Ann Polk.

So she had $7,130 and $156.12—$7,286.12, while T. P. Devereux had $12,861 and $418.88 and $575—$13,854.88.

But probably it was unnecessary to say more upon these subjects than we have already said on pages 19 and 20 and pages 54 and 55. We recur to it again here because, when speaking of it before we treated the $418.88 added to T. P. Devereux's share, as if it had been taken from the $7,130 allowed to said Frances Ann. The accurate statement is this, but for purposes of illustration, the other answers best.

But, in truth, the only use we make of Accounts D, F and G (record, pages 101 to 105) is in ascertaining the *amount* of the recovery to be had by the appellees, since it is, and must be, for the one-third ($\frac{1}{3}$) of the sum of $41,633. The plaintiffs are not asking for any recovery against Thomas P. Devereux, or his executor and administrator—they have gone out of this case; or even against his estate and effects, in the hands of his trustees and assignees in bankruptcy; we have only asked for a decree against the administrator *de bonis non* of Frances Devereux, and that he shall collect so much of said Frances Devereux's assets as are needed to pay our claims, out of the fund yet charged on the Pollock lands, or their proceeds, in the hands of the trustees and assignees in bankruptcy of T. P. Devereux. The one-third of Frances Devereux's undisposed of residue—the value of that one-third—is what we wished to ascertain; and certainly *all* the negro slaves constituted a part of that undisposed of residue, whether T. P. Devereux got them all, or divided them with Frances Ann Polk, or *after* converting them all to his own use, then gave part of them to Frances Ann Polk. For all practical purposes, Account D is but an *inventory* of the undisposed of assets of Frances Devereux, with the values in dollars and cents attached to the items. It will not be denied, that the

appellees—the plaintiffs—who instituted this suit, have the right to one-third of the undisposed of residue of Frances Devereux's assets.

This argument has already occupied so much time and space that we have concluded to abandon the preparation of the appendix promised in the earlier part hereof. But it is not without interest to see that, in fact, Frances Ann Polk got about one-third of the undisposed of residue—her share, while Thomas P. Devereux got two-thirds—his share and ours.

Shortly stated, the whole history of Frances Devereux's assets is as follows:

In June, 1849, she died, leaving as assets about enough of household furniture, crop on hand, farm stock, and other trifling articles, to pay her debts and funeral and testamentary expenses. Also, about sixty slaves, of which she made no disposition, but directed that they should be sold and converted into bonds, but failed to dispose of the bonds. Also, she had a power to appoint, and had by her will appointed, about $22,000, charged upon her son's (Thomas P. Devereux) lands, for the payment of legacies given to charities.

The assets which were left for division among her next of kin, were in fact the sixty slaves, or their proceeds after they had been converted into bonds.

All the rest was consumed, either in the payment of debts and funeral and testamentary expenses, or in the appointments to the charities.

Thomas P. Devereux, her eldest son, took possession of all the property, paid the debts and funeral and testamentary expenses, settled with all the charities, and had in his possession, in October, 1852, about three (3) years after her death, *all the sixty slaves*, worth in round numbers about $21,000.

Then—instead of dividing the slaves into *three equal* portions, worth about $7,000 each, taking one himself and giving

to Frances Ann Polk another, and to the plaintiffs in this controversy the third to which they were entitled—he divided them into *two unequal portions*, one of about the value of $14,000 and the other of about the value of $7,000; and then gave to Frances Ann Polk the negroes worth about $7,000, to which she was entitled, and kept for himself the portion worth about $14,000, which included the slaves to which he was entitled and the share to which the plaintiffs were entitled as well. And, now and here, thirty-four years after their ancestor's death, and a quarter of a century after they began their pursuit, they are still looking for their share of the assets.

S. F. PHILLIPS,
Counsel for Appellees.

PREPARED BY
ED. GRAHAM HAYWOOD,
Attorney and Counsel for Appellees.

Raleigh, N. C., April 13th, 1883.

108-422

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IN THE

Supreme Court of the United States.

No. 261.

WM. J. HAWKINS and WALTER CLARK, Assignees in Bankruptcy of the estate and effects of THOS. P. DEVEREUX, a Bankrupt, and WALTER CLARK and JNO. DEVEREUX, Trustees, substituted for THOS. P. DEVEREUX, *Appellants,*

Against

GRINFILL BLAKE and E. J. D. BLAKE, his wife, and JNO. TOWNSEND and GEORGIANA P. TOWNSEND, his wife, *Appellees.*

BRIEF FOR JNO. DEVEREUX, JR., ADMINISTRATOR

Richard C. Badger, Adm'r *d. b. n. c. t. a.* of Frances Devereux, having died pending this appeal, on the 9th day of April, 1883, John Devereux, Jr. was duly appointed and qualified as such administrator in his stead; and voluntarily came in and was admitted party to this suit in pursuance of general rule 15 of this Court, and submits himself to the decree of the Court herein, asking that he may be protected in any decree that shall be entered. He respectfully calls the attention of the Court to the legacies mentioned in the 8th item of the will of Frances Devereux, (record page 21) and to the stipulation of Counsel (on page 202 of the record), and respectfully suggests, that the only legacies which it may become his duty as administrator to pay,

are the annuities to Louisa N. Taylor, to the two girls at the Mission School in Ceylon, and the Rev. Theron Baldwin.

Nothing appears in the record to extinguish these legacies; although it is highly probable that the one to the two girls in the Mission School in Ceylon has lapsed.

If it be the duty of the administrator to pay these legacies, he prays that the Court may make such an order as may preserve the rights of the said legatees, and protect him from liability in the premises.

It will be observed, that certain of the legatees and next of kin of Frances Devereux, are claiming a specific fund, belonging to her general personal estate. They can only claim this fund through her personal representative. It is his duty to administer the same; and he respectfully submits, that any decree for the distribution of the personal estate of the said Frances Devereux should be modified so as to direct the fund to be paid to him. The letters of administration direct the administrator "to enter in and upon all and singular the goods and chattels, rights and credits, of the deceased; and to take the same into possession, wheresoever to be found, and all the just debts of the said deceased to pay and satisfy, and the residue of the said estate to distribute according to the terms of said will." See Revised Code of North Carolina, ch. 46, sec. 4.

He has absolute power over the personal estate—Iredell on Executors, 498; 2 Williams on Executors, 5th Am. Ed., 838. It is his duty to collect the assets—Iredell on Executors, 364; 2 Williams on Executors, 889; and to pay the debts—Iredell on Executors, 512; 2 Williams on Executors, 890; and to pay the legacies—2 Williams on Executors, 947 *et seq.*; and to distribute the residue among the next of kin—2 Williams on Executors, 1335 *et seq.*

An executor, who has proved the will, or an administrator, who has taken out letters, cannot retire from duty, but must collect the estate himself. 2 Williams on Executors, 1685; *Weiss* v. *Dill*, 3 M. & K., 26. The legal title to all the personal property of the deceased, including choses in action, vests in the

administrator or executor. He is the only representative whom the law will regard, and his rights are exclusive; *Beattie* v. *Abercrombie*, 18 Ala., 9; *Sneed* v. *Hooper*, Cook, (Tenn.) 200; *Beecher* v. *Buckingham*, 18 Conn., 110; *Neale* v. *Hagthrop*, 3 Bland, (Md.) 551. The property of the deceased vests absolutely in the administrator. *Jewell* v. *Smith*, 12 Mass., 309; *Lawrence* v. *Wright*, 23 Pick., 128; *Brackett* v. *Hoitt*, 20 N. H., 257; *McVaughters* v. *Elder*, 2 Brev., (S. C.) 307.

Under the law of North Carolina, executors and administrators are allowed commissions. Battle's Revisal, ch. 45, sec. 146. *Boyd* v. *Hawkins*, 2 Dev. Eq., 329; *Smith* v. *Smith*, 79 N. C., 455; *Drake* v. *Drake*, 82 N. C., 443; *Green* v. *Barbee*, 84 N. C., 69. It would be very unfair to the administrator, without whose appointment and presence in this suit, the appellees could have no relief, that, by a decree, ignoring him, and directing the payment of his testatrix's estate directly to legatees and distributees, he should be deprived of his reasonable commissions, which the law intends that he shall have.

Having but recently qualified as administrator *d. b. n. c. t. a.* the administrator, in making himself a party to the suit, asks the protection of the Court, this being the first opportunity afforded him for this purpose.

JOHN W. HINSDALE,

Solicitor for John Devereux, Jr., Administrator, &c.